

PART 3

DESIGN - BUILD CONTRACT

WASHINGTON STATE FERRIES

NEW 144 – AUTO FERRIES

DESIGN - BUILD CONTRACT NO. 00-6674

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LIST OF CONTRACT EXHIBITS

<u>EXHIBIT</u>	<u>TITLE</u>
1.	NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY
2.	WAGES, BENEFITS AND RATES
	A. ATTACHMENT A
	Prevailing Minimum Hourly Wage Rate – State
3.	CONTRACTOR’S WAIVER AND RELEASE ON PROGRESS PAYMENT
4.	SUBCONTRACTOR / SUPPLIER WAIVER AND RELEASE ON PROGRESS PAYMENT
5.	VESSEL DELIVERY SCHEDULE
6.	WSF PERSONNEL FACILITIES
7.	DISPUTES REVIEW BOARD
8.	CONFIDENTIALITY AGREEMENT

WASHINGTON STATE FERRIES
NEW 144 – AUTO FERRIES
DESIGN - BUILD CONTRACT NO. 00-6674

1 **THIS DESIGN - BUILD CONTRACT** is made and entered into this ____day of
2 _____, 200_, by and between **WASHINGTON STATE FERRIES**, a division of the
3 Washington State Department of Transportation (hereinafter called "WSF") and
4 _____, a corporation authorized to do business in
5 the State of Washington (hereinafter called the "Contractor").

6
7 **WITNESS THAT:**

8
9 **WHEREAS**, WSF desires to construct a maximum of four (4) auto/passenger ferries
10 (hereinafter called the "Vessels" or "Ships") to enhance WSF's ferry operations within Puget
11 Sound, Washington (hereinafter "Project"); and

12
13 **WHEREAS**, each Vessel will be 362' 5" length overall x 83' 4" maximum beam, and
14 carry 1500 passengers and 144 autos; and

15
16 **WHEREAS**, pursuant to Revised Code of Washington (RCW)47.60.810 *et seq.*,
17 WSF issued a modified Request for Proposals (RFP) for a design - build procurement of the
18 Vessels; and

19
20 **WHEREAS**, pursuant to 47.60.810 *et seq.*, upon completion of the development of
21 Technical Proposals in Phase II of the process, WSF requested firms that qualified in
22 accordance with RCW 47.60.820 to submit bids to construct the Vessels within the state of
23 Washington; and

24
25 **WHEREAS**, WSF desires to contract for the detailed design and construction of four
26 (4) Vessels; and

27
28 **WHEREAS**, qualified firms submitted bids to WSF for this Contract; and following
29 bid evaluation, WSF selected the Contractor's bid as the lowest responsive and responsible
30 bid, taking into consideration the RFP requirements and the bid evaluation; and

31
32 **WHEREAS**, the Contractor is duly authorized and qualified to perform the Contract
33 Work herein, and has signified its capability and willingness to perform such Contract Work
34 in accordance with the terms of: (i) this Contract; (ii) the Contractor's Bid; and (iii) the RFP
35 Package (including all Addenda thereto); and (iv) the Contractor's Prequalification
36 documents, all of which are incorporated herein by this reference; and

1 **WHEREAS**, WSF agrees to compensate the Contractor for the Contract Work in
2 accordance with and subject to the terms of this Contract;
3

4 **NOW, THEREFORE**, in consideration of the terms, conditions, covenants and
5 performances contained herein or attached, referenced and made a part hereof, the parties
6 hereto agree as follows:
7
8

9 **1. DEFINITIONS, ABBREVIATIONS AND INTERPRETATION OF TERMS**

10
11 The following definitions, abbreviations and interpretations of terms are meant to assist the
12 establishment of a common meaning and understanding of this Contract. In the event of any
13 instance where there is an irreconcilable inconsistency between the definitions and
14 abbreviations set forth in this Article and the use of said terms elsewhere in the Contract
15 Documents, then in that instance, but only in that instance, the use of such definition,
16 abbreviation or interpretation of terms elsewhere in the Contract Documents shall govern.
17 Provisions contained in Exhibits may use different defined terms than those stated in this
18 Article.
19

20 **1.1. Definitions**

21
22 **Addenda** shall mean those documents identified as Addenda issued by WSF through
23 the date hereof as supplements to the project Request for Proposals (RFP) Package,
24 but only to the extent that such Addenda supplement, modify or interpret Contract
25 Documents.
26

27 **Arrangement Drawings** (see "**Drawing Definitions**").
28

29 **As Built Drawings** (see "**Drawing Definitions**").
30

31 **Authoritative Agencies** or **Regulatory Agencies** shall mean, with respect to any
32 particular aspect of the Contract Work, any governmental or governmental invoked
33 agency including, but not limited to: the Institute of Electrical and Electronics
34 Engineers (IEEE), United States Coast Guard (USCG), United States Public Health
35 Service (USPH), Federal Communication Commission (FCC), Federal Highway
36 Administration (FHWA), United States Net and Gross Tonnage Admeasurements
37 (USNGTA), Underwriters' Laboratories (UL), Washington State Department of
38 Labor and Industries (WSL&I), U.S. Department of Labor (DOL), and others like the
39 Classification Society, Illumination Engineering Society, etc.; (i) whose approval may
40 be required to fulfill the obligations of the Contract; (ii) which have promulgated
41 relevant Regulations; (iii) which are referenced by this Contract, the Technical
42 Specification, or the Drawings, directly or indirectly; or (iv) which in any other
43 manner has authority with respect to the Contract Work and the Vessel.
44

45 **Bid** shall mean the financial offer of the Contractor submitted on the prescribed Bid
46 Form for the Contract, which offer has been accepted by WSF.

1 **Bid Documents** shall mean the Bid, Bid Security, and all supplemental information,
2 instruments or documents, which the Contractor provided or submitted to WSF in
3 response to Phase III of the RFP.
4

5 **Bid Price** shall mean the Contractor's bid price for the Contract Work, as shown on
6 the Bid Form.
7

8 **Change Order** shall mean a written order issued by WSF, on a WSF-provided form,
9 describing a change to the Contract in accordance with the procedures set forth in the
10 "Contract Changes" Article.
11

12 **Change Order Work** shall mean that work identified in and authorized by a WSF
13 approved Change Order and includes work directed by WSF to be performed as Force
14 Account Work.
15

16 **Commission or Washington State Transportation Commission** shall mean the
17 appointive body having authority over State transportation matters as provided by
18 law.
19

20 **Completion Date** (for each Vessel) is the date all of the Contract Work for such
21 Vessel, including all non-physical (paper) Contract Work, is completed. It will not be
22 the same date as Final Acceptance, which occurs upon WSF acceptance of all
23 Contract Work for all Vessels at the end of the Contract. The WSF Representative
24 will determine when the Completion Date occurs and will give the Contractor written
25 notice of such Date.
26

27 **Completion or Completion Date** (for the Contract) is the date all of the Contract
28 Work for all Vessels, including all non-physical (paper) Contract Work, is completed.
29

30 **Continuous Service Rating** is the power output at any specified engine RPM
31 between idle and full rated RPM, for continuous marine service, for a diesel engine.
32 The "ISO Standard Power" determined in accordance with ISO 3046/1 for continuous
33 marine propulsion duty is used to establish such ratings. Continuous service is
34 intended to describe operations, at the rated power output, twenty-four hours a day for
35 periods nominally on the order of 365 consecutive days.
36

37 **Maximum Continuous Service Rating** is maximum value of the continuous
38 service rating function given above.
39

40 **Contract** shall mean all of the Contract Documents invoked by executing this
41 Contract. What is stated in one part of the Contract applies to the whole Contract.
42

43 **Contract Documents** consist of the RFP Package, the Bid Documents, the Technical
44 Proposal, Bid Form, this Design - Build Contract, Change Orders.
45

1 **Contract Price** is the total amount payable by WSF to the Contractor for
2 performance of the Contract Work as stated in the Contract and as adjusted from time
3 to time in accordance with the Contract
4

5 **Contract Security** is the form of performance, payment and warranty security
6 furnished by the Contractor in compliance with the "Contract Security" Article.
7

8 **Contract Time** (for each Vessel) shall mean the time between the Notice to Proceed
9 and the Delivery Date for each Vessel.
10

11 **Contract Work** shall mean all of the administrative, design, engineering,
12 procurement, legal, professional, manufacturing, supply, installation, construction,
13 supervision, management, testing, inspection, labor, materials, equipment,
14 maintenance, documentation, and other duties and services to be furnished and
15 provided by the Contractor as required by the Contract Documents, including Change
16 Order Work and all efforts necessary or appropriate to achieve Final Acceptance,
17 except those efforts which the Contract Documents specify will be performed by
18 WSF or other persons.
19

20 **Contractor** is the party to the Contract that is responsible for the design and
21 construction of the Vessel(s), the care and custody of the Vessel(s) and performance
22 of all Contract Work.
23

24 **Contractor's Representatives** shall mean those individuals who have authority to
25 make final decisions on behalf of the Contractor as designated by written notice to
26 WSF required by the "Contractor's Representatives" Article. Each Contractor's
27 Representative shall have such power as is set forth in the written appointment.
28 Reference to the "Contractor's Representative" for a particular aspect of the Contract
29 Work shall mean the appropriate Contractor's Representative charged with
30 responsibility for such matters in the written appointment.
31

32 **Correction Period** shall have the meaning set forth in the "Warranty Deficiencies
33 and Remedies" Article.
34

35 **Days** shall mean calendar days unless otherwise stated.
36

37 **Definite Work Price** shall have the meaning set forth in the "Progress Payments"
38 Article.
39

40 **Deleted Work** shall mean Contract Work that is eliminated by a Change Order as
41 provided for in the "Contract Changes" Article.
42

43 **Delivery** shall mean the Contractor's transfer of a substantially completed Vessel to
44 WSF's care, custody and control at the designated Delivery location in a complete,
45 seaworthy, clean and fully operational condition, fit to perform its intended services
46 and with all of the Contract Work performed (provided that Delivery may occur

1 under such other circumstances as may be acceptable to WSF under the terms of the
2 "Delivery" Article). Delivery is part of the Contract Work.

3
4 **Delivery Date** shall mean the date Delivery occurs. The Delivery Date for each
5 Vessel is specified in Contract Exhibit 5, Vessel Delivery Schedule, which is attached
6 hereto and by this reference incorporated herein, and may be modified by certain
7 Articles of the Contract.

8
9 **Department or Washington State Department of Transportation** shall mean the
10 Agency authorized by the laws and regulations of the State to administer
11 transportation related work.

12
13 **Detailed Design** shall mean the design details, Drawings, and other design related
14 information prepared by the Contractor in order to construct the Vessels as required
15 by the Technical Specification and the Contractor's approved Technical Proposal.

16
17 **Diagrammatic Drawings** (see "Drawing Definitions").

18
19 **Drawings** shall mean collectively all of the following types of drawings, individually
20 defined as follows:

21
22 **Arrangement Drawings** are those drawings, prepared by the Contractor and
23 subject to approval by WSF that show the physical location of equipment,
24 service, piping, cable runs or any other category of installation. The term
25 Arrangement Drawings covers: General Arrangement Drawings which show
26 the location of spaces and items in relationship to each other; Space
27 Arrangement Drawings which show the equipment and other items within a
28 space; and specific System Arrangement Drawings which show how
29 equipment will be placed, piping will be run, cable runs will be laid and other
30 services provided. Arrangement Drawings may or may not be dimensioned,
31 depending on the requirements of the system and/or equipment being
32 installed. In the case of Arrangement Drawings that are not dimensioned, the
33 Contractor shall maintain the relative and proportional physical relationship of
34 items shown. In the case of dimensioned drawings, the Contractor shall install
35 the equipment/items to the dimensions shown within the Contract tolerances
36 for installation. Interferences encountered are the responsibility of the
37 Contractor to resolve as a part of the base Contract Work. Deviations from
38 dimensioned drawings and/or Arrangement Drawings require written
39 authorization from WSF prior to implementation.

40
41 **As Built Drawings** are Working Drawings in each specified category that are
42 revised by the Contractor, after installation is complete, by actual physical
43 measurement. They contain dimensions of equipment, service and structure,
44 all referenced to established baselines within the Vessel. Such drawings must
45 accurately document the Vessel upon completion of all Contract Work.

1 **Certified Drawings** are drawings provided by WSF's Propulsion System
2 vendor, WSF's Ships Service Diesel Generator vendor or their respective
3 subcontractors to show details of manufactured pieces of equipment or
4 systems. These drawings will also include information for Contractor
5 installation purposes.
6

7 **Diagrammatic Drawings** are any drawings that represent piping, ventilation,
8 and electrical systems indicating the relative function of the system
9 components, valves and fittings, branches, etc. that can be used as a guide to
10 arrangement and detail drawings. They contain information such as pump and
11 motor size and capacity; pipe, duct, or wire size; flow direction, velocity and
12 pressure, voltage and ampere rating, pressure drops and other design criteria
13 which will identify major equipment and components, function and operating
14 characteristics, including all control and alarm settings.
15

16 **Shop Drawings** are drawings that illustrate how furniture, case goods,
17 partition walls and office items will be custom built. These drawings will be
18 prepared and submitted to WSF for approval by the manufacturer to show
19 details of construction, integration with equipment and configuration to assure
20 acceptable final appearance and fit.
21

22 **Technical Proposal Drawings** are those drawings provided by the Contractor
23 in Phase II in the Contractor's Technical Proposal documents, when approved
24 by WSF and identified as such in the specifications. They portray some, but
25 not necessarily all of the features and arrangements of the Vessel to be
26 implemented by the Contractor. Any departure from these Drawings
27 following approval by WSF must be specifically authorized in writing by
28 WSF.
29

30 **Vendor Drawings** are drawings provided by vendors of the Contractor to
31 show details of manufactured pieces of equipment or systems.
32

33 **Working Drawings** shall mean those detailed design drawings, sketches,
34 calculations, etc., prepared by the Contractor during Phase III for the purpose
35 of completing the detailed design and providing direction to installing workers
36 that will insure compliance with Contract Documents. WSF review and
37 approval of Working Drawings does not relieve the Contractor of
38 responsibility for meeting Contract requirements. They shall be to a level of
39 detail to permit review by WSF and Authoritative Agencies and to facilitate
40 timely completion of the Contract Work.
41

42 **Drydock** shall mean the Contractor's drydock located at the Shipyard or such other
43 drydock as WSF may approve in writing.
44

45 **Eagle Harbor** shall mean the WSF maintenance facility located on Bainbridge
46 Island, Washington.

1 **Escrowed Bid Documents (EBDs)** – shall mean the documentary information used
2 in preparation of the Contractor’s Bid required to be placed in safekeeping as
3 provided in the “Escrow Bid Documentation” Article.
4

5 **Events of Default** shall have the meaning set forth in the "Termination for Default"
6 Article.
7

8 **Final Acceptance or Final Acceptance Date** is the date that WSF's Director, Vessel
9 Engineering, signs the designation "Date of Acceptance" on the Final Contract
10 Voucher Certification (WSDOT Form #134-146) following Completion and Final
11 Acceptance of all Contract Work. The Contractor is required to properly execute and
12 forward this form to WSF.
13

14 **Final Contract Voucher Certificate** shall have the meaning set forth in the
15 "Progress Payments" Article.
16

17 **Force Account Work** shall have the meaning set forth in the “ Contract Changes”
18 Article.
19

20 **Notice to Proceed (NTP)** - The written authorization issued by WSF that permits the
21 Contractor to commence performance of the Contract Work.
22

23 **Owner Furnished Equipment or OFE** shall mean equipment identified on the
24 Contract Documents as being provided by WSF, if any, and shall be processed in
25 accordance with the "Owner Furnished Equipment" Article.
26

27 **Progress Estimates** shall have the meaning set forth in the "Progress Payments"
28 Article.
29

30 **Progress Payments** shall mean payments made in accordance with the terms of the
31 "Progress Payments" Article.
32

33 **Project Engineer** shall mean the individual identified in writing by WSF as the
34 representative of WSF that is in charge of the construction oversight for the State and
35 is designated as the WSF Project Engineer.

36 **Quality Management Plan (QMP)** shall mean the plan, developed by the
37 Contractor, which identifies the Contractor’s overall framework for implementation
38 of its Quality Control and Quality Assurance programs across all aspects of the
39 Project, including, but not limited to, management, administration, design, and
40 construction.

41 **Quality Assurance (QA)** - All those planned and systematic actions performed by
42 the Contractor to demonstrate to WSF that the Contract Work complies with the
43 Contract and that all elements of the Contract Work will perform satisfactorily for the
44 purpose(s) intended.
45

1 **Quality Control (QC)** - The total of all activities performed by the Contractor to
2 assess design, production and construction processes so as to control the level of
3 quality being produced in the end product. Components may include design reviews
4 and checks, establishing procedures, calibrations and maintenance of equipment, shop
5 drawing review, document control, production process control, and any sampling,
6 testing, and inspection done for these purposes.
7

8 **Ready for Trials Date** is the day that is determined and agreed, by joint inspection,
9 that the Contract Work is sufficiently complete and the Contractor can schedule Dock
10 and Sea Trials as specified by the Contract Documents. The joint inspection shall be
11 conducted by WSF and the Contractor to ensure all equipment has been properly
12 tested, all service systems have been completely installed and tested and/or approved,
13 all excess material and equipment has been removed from the Vessel, all spaces have
14 been cleaned and inspected, and all listed discrepancies are minor in nature and
15 magnitude, and all unfinished Contract Work is considered minor.
16

17 **Regulations** shall mean collectively all applicable Federal, State, Authoritative
18 Agency and local laws, ordinances and regulations.
19

20 **Retainage** shall mean a 5% withholding from each Progress Payment and Change
21 Order Work payment pursuant to RCW 60.28.011 and in accordance with the
22 "Progress Payments" Article.
23

24 **Request for Proposals ("RFP" or "RFP Package")** shall mean the project
25 solicitation documents issued by WSF entitled "Request for Proposals – New 144 –
26 Auto Ferries Design - Build Contract, including Volume IA, Phase I Prequalification;
27 Volume IB, Phase I Proposer Information; Volume II, Phase II Technical Proposal
28 Requirements; Volume III, Contract Provisions; Volume IV, Technical Specification;
29 Volume V, Owner Furnished Equipment; and all Addenda or revisions thereto.
30

31 **Schedules** shall mean those schedules identified in the "Schedules" Article.
32

33 **Secretary or Secretary of Transportation** shall mean the Secretary of the
34 Washington State Department of Transportation and such agents as are authorized to
35 act in his behalf.
36

37 **Shipyard** shall mean the location(s) where the Contract Work is to be performed or
38 such other location(s) as WSF may approve in writing.
39

40 **Shipyard Specification** (see "Specification Definitions").
41

42 **Specifications Definitions:**
43

44 **Technical Specification** shall mean the specifications prepared by WSF in
45 accordance with RCW 47.60.814 providing the requirements for the Vessels
46 published in RFP Vol. IV and any Addenda thereto.

1
2 **Shipyard Specification** shall mean the Vessel specifications contained in the
3 Technical Proposal prepared by the Contractor and approved by WSF in
4 Phase II.

5
6 **State** shall mean the Washington State Department of Transportation, acting by and
7 through its Washington State Ferries division, and its duly authorized
8 representative(s), as designated in writing by the Secretary.

9
10 **Substantial Completion Date** (for each Vessel) is the day the WSF Representative
11 determines that WSF has full and unrestricted use and benefit of the Vessel, from
12 both the operational and safety standpoints, with only minor incidental work or
13 correction or repair remaining for completion of the Contract Work for the Vessel.
14 Delivery may not occur until such time as WSF determines the Vessel is Substantially
15 Complete. WSF will send a letter acknowledging Substantial Completion, and
16 specifying the status of liquidated damages.

17
18 **Subcontractor** shall mean any entity with whom the Contractor has entered into any
19 Subcontract and any other entity with whom any Subcontractor has further
20 subcontracted any part of the Work, at any tier. Suppliers and materialmen are
21 excluded from the term. The members of a joint venture Contractor shall not be
22 considered Subcontractors under this Contract.

23
24 **Surety** shall mean any surety or bond company that is responsible for any portion of
25 the Contract Security; or whose assets may be, in any way, bound to ensure
26 performance of the Contract requirements, payment of all obligations pertaining to
27 the Contract Work, and fulfillment of such other conditions as are specified in the
28 Contract, or as otherwise required by law.

29
30 **Technical Proposal** shall mean the Contractor's Technical Proposal submitted during
31 Phase II of the RFP process as approved by WSF.

32
33 **Technical Proposal Drawings** (see "**Drawing Definitions**").

34
35 **Technical Specification** (see "**Specifications**")

36
37 **Termination Claim** shall mean the claim presented by the Contractor pursuant to the
38 "Termination for Public Convenience" Article.

39
40 **Vessel(s)** or **Ship(s)** are interchangeable throughout the Contract Documents.
41 Generally, the word "Vessel" means the Vessel subject to the Contract Work under
42 this Contract.

43
44 **Warranty Deficiencies** shall have the meaning set forth in the "Warranty
45 Deficiencies and Remedies" Article.
46

Weighted Factor shall mean a value assigned to a work breakdown item in accordance with the "Progress Payments" Article which represents the item's percentage of the Total Contract Work and Change Order Work. The sum of all the Weighted Factors shall equal one hundred percent (100%) of the price for each respective vessel.

Working Drawings (see "**Drawing Definitions**").

WSF shall mean **Washington State Ferries**, a division of the Washington State Department of Transportation, acting by and through its authorized representative(s).

WSF Expense shall have the meaning set forth in the "Termination for Default" Article.

WSF Representative or **State's Representative** shall refer to the designated representatives appointed by WSF, which may be the Project Engineer or other designated representative. Each WSF Representative shall have such power as is set forth in the written appointment. Reference to the "WSF Representative" for a particular aspect of the Contract Work shall mean the appropriate WSF Representative charged with responsibility for such matters in the written appointment.

1.2. Additional definitions relating to other topics are contained in the appropriate Articles and Sections of this Contract and other Contract Documents.

1.3. **Abbreviations**

1.3.1. Associations and Miscellaneous

The following abbreviations shall have the meanings set forth next to them when used in the Contract Documents:

ABS	American Bureau of Shipping
ACM	Asbestos Containing Materials
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASNT	American Society for Nondestructive Testing
ASTM	American Society for Testing and Materials
ASME	American Society of Mechanical Engineers
ASHRAE	American Society of Heating, Refrigeration, and Air Conditioning Engineers
AWS	American Welding Society
AWWA	American Water Works Association
BHD	Bulkhead
CFR	Code of Federal Regulations
CL	Centerline

1	CR	Contract Report
2	CS	Classification Society
3	DBE	Disadvantaged Business Enterprise
4	DOL	United States Department of Labor
5	DOT	United States Department of Transportation
6	EPA	Environmental Protection Agency
7	FCC	Federal Communications Commission
8	FHWA	Federal Highway Administration
9	FR	Frame
10	FTA	Federal Transit Administration
11	IEEE	Institute of Electrical and Electronics Engineers
12	ISO	International Standards Organization
13	LCP	Lead Containing Paint
14	LPD	Lower Passenger Deck
15	MARAD	Maritime Administration, Department of Transportation
16	MCR	Maximum Continuous Service Rating, in accordance with ISO
17		3046/1
18	MBE	Minority Business Enterprise
19	MSS	Manufacturers Standardization Society of the Valve & Fittings
20		Industry
21	NAS	National Aerospace Standards
22	NEC	National Electrical Code
23	NEMA	National Electrical Manufacturers Association
24	NFPA	National Fire Protection Association
25	NPT	National Standard Taper Pipe Thread
26	NVIC/NVC	Navigation and Vessel Inspection Circular
27	OFE	Owner Furnished Equipment
28	PCB	Polychlorinated Biphenyl
29	QA	Quality Assurance
30	QC	Quality Control
31	RCW	Revised Code of Washington
32	RFP	Request for Proposal
33	SAE	Society of Automotive Engineers
34	SCR	Silicon Control Rectifier
35	SNAME	Society of Naval Architects and Marine Engineers
36	SSPC	Steel Structures Painting Council
37	STBD	Starboard
38	UL	Underwriters' Laboratories, Inc.
39	UPD	Upper Passenger Deck
40	USC	United States Code
41	USCG	United States Coast Guard
42	USPHS	United States Public Health Service
43	WAC	Washington Administrative Code
44	WBE	Women's Business Enterprise
45	WHO	World Health Organization
46	WSDOE	Washington State Department of Ecology

WSDOLI	Washington State Department of Labor and Industries
WSDOT	Washington State Department of Transportation
WSF	Washington State Ferries
WSTC	Washington State Transportation Commission

1.3.2. Items of Work and Units of Measurement

The Contract Documents may include common engineering and construction abbreviations. The following list is not all inclusive, but when the following abbreviations are used, they shall have the meanings set forth next to them:

Al.	Aluminum
Atm	Atmospheres
C	Centigrade
CFM	Cubic Feet per Minute
Cfs	Cubic Feet per Second
Cl.	Class
cm	Centimeters
cm ²	Square Centimeters
cm/s	Centimeters per Second
CO ₂	Carbon Dioxide
DIA.	Diameter
DWG	Drawing(s)
Est.	Estimate or Estimated
Excl.	Excluding
F	Fahrenheit
Ft.	Foot or Feet
g	Grams
GPH	Gallons per Hour
GPM	Gallons per Minute
In.	Inch(es)
Incl.	Included
IPS	Iron Pipe Size
J	Joules
KG	Kilograms
KW	Kilowatts
KWH	Kilowatt Hours
kPa	Kilopascals
L	Liter
l/s	Liters per Second
l/min	Liters per Minute
lb.	Pound(s)
LF	Linear Foot (Feet)
m	Meter(s)
mm	Millimeter(s)

m ²	Square Meters
mm ²	Square Millimeters
m/s	Meters per Second
m ³ /s	Cubic Meters per Second
Mech	Mechanical
Nat	Natural
PRESS	Pressure
Pa	Pascals
PSI	Pounds per Square Inch
PSIG	Pounds per Square Inch Gauge
PSIA	Pounds per Square Inch Absolute
PVC	Polyvinyl Chloride
QTRS	Quarters
RGLTR.	Regulator
SECT.	Section
Sq. Ft.	Square Foot (Feet)
Sq. Yd.	Square Yard(s)
STL.	Steel
Tonne	Metric Ton (1000 KG)

1.4. Interpretation of Terms

1.4.1. **Approved Marine Construction and Repair Practices** - The term "approved marine construction and repair practices" refers to the Contract Work on the Vessel consistent with those soundly conceived and engineered details, plans, and practices which have proven to be effective and reliable in the maritime industry for seaworthy vessels, which will meet the details and performance requirements of the Contract Documents and which are required to obtain and/or maintain approval or certification of all Authoritative Agencies. However, approval by any Authoritative Agency does not imply acceptance by WSF, nor does it necessarily mean "approved marine construction and repair practices."

1.4.2. **Approval** - Unless the context is expressly to the contrary, any reference in the Contract Documents to "approved" or "approval" shall mean "approved by WSF" or "approval by WSF". WSF approval does not: (1) relieve the Contractor of securing approval of the Authoritative or Regulatory Agencies as required by law; (2) relieve the Contractor of the obligation to meet the requirements of the Contract Documents; or (3) constitute a modification of the requirements of the Contract Documents.

1.4.3. **Capitalized Terms** - Terms used during the performance of the Contract Work shall have the meaning assigned to them in the Contract Documents as the context may require, whether or not capitalized or identified as a defined term.

- 1.4.4. **Compliance With, According To** - Terms such as "compliance with" or "according to" the Contract Documents shall mean compliance with or according to all of the Contract Documents subject to the "Coordination of Contract Documents" Article and subject to any variation from certain of the Drawings as is permitted by the terms of the Contract Documents.
- 1.4.5. **Days** - Any reference to "days" herein shall be calendar days unless otherwise specified.
- 1.4.6. **Dollars** or \$ - Any reference to "dollars" or use of the symbol "\$" herein shall be United States dollars.
- 1.4.7. **Furnish** - When the Contract Documents state that the Contractor is required to furnish an item, the Contractor shall be responsible for manufacturing, purchasing, or otherwise procuring and providing such item including all spare parts and documentation, and deliver such item on board the Vessel prior to Delivery, handling and stowing as directed by WSF, or installing as required by the Contract. This definition does not apply to items furnished under the "Owner-Furnished Equipment" Article.
- 1.4.8. **He, She or It** - These terms are used interchangeably and in the sex neuter sense.
- 1.4.9. **Install** - When the Contract Documents state that the Contractor is to install an item, the Contractor shall be responsible for supplying all labor, tools, equipment, and material necessary to perform such installation in accordance with manufacturer's instructions and as required by the Contract Documents. For all installations, including OFE, if any, the Contractor shall supply all electrical power, water service, lubrication, lighting, ventilation and other facilities or means required for the complete, in ready to operate condition, installation, and shall deliver to WSF complete and operable machinery, equipment, or systems.
- 1.4.10. **Or Equal** - An "or equal" product is one which exhibits, among other things, both a size and weight of substantial similarity to the listed item as to ensure that no adjustment to the equipment arrangement would be required to accommodate the products inclusion as a substitute into the Vessel(s), and which has equivalent characteristics, performance, reliability, maintainability and other salient features as the product identified in the Contract Documents, and which fulfills the requirements thereof. The total performance of the "or equal" product will be such that its use will not adversely affect the intended performance or systems of the Vessel and will cause no increase in required maintenance or accelerate the need for premature replacement. The specific requirements for obtaining an "Or Equal" approval from WSF are set forth in the "Or Equal" Substitution Requirements section of Section 1 of the Technical Specification.

Demonstration of an "or equal" status is the sole responsibility of the Contractor. All "or equal" substitutions require written approval by the WSF Project Engineer. The approval of an "or equal" product by WSF does not relieve the Contractor of resolving any problems or interference which result from differences between the specified product and the "or equal" product.

- 1.4.11. **Provide** - When the Contract Documents state that the Contractor is to provide an item, the Contractor shall furnish and install the item, making such connections as necessary to make the item fully operational, i.e., provide engineering, labor, tools, equipment, furnish such items as foundations, brackets, braces, electric wiring, piping connections, etc., as necessary.

2. SCOPE OF WORK

- 2.1. The Contractor shall start work within 14 calendar days from the date of Notice to Proceed, unless otherwise approved in writing. The Contractor shall diligently pursue the Contract Work to completion within the time specified in the Contract including making Delivery of each Vessel by the times required in Contract Exhibit 5. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the Contract Work within the time(s) specified in the Contract. In constructing the Vessels, and any authorized Change Order Work, the Contractor shall: (i) furnish, provide, perform and/or install (as the case may be) all services, design, detailed design, Drawings, labor, tools, equipment, materials, transportation, and incidentals (as the case may be) described in or contemplated by the Contract Documents; and (ii) do everything required of the Contractor pursuant to the terms set forth in, or incorporated by reference into, the Contract Documents.

- 2.2. The Contract Work requires the design, construction and delivery of four (4) new Vessels and includes the requirements of the Technical Specification and the Contractor's approved Technical Proposal. The Contractor acknowledges and agrees that it is fully and solely responsible for development of its Technical Proposal, the resulting design and design details of the Vessels, construction of the Vessels, and Delivery of the Vessels. The Contractor further warrants and agrees that by virtue of its participation in Phase II of the RFP process for this Contract and development by Contractor of its Technical Proposal, the Contractor has thoroughly and adequately reviewed and compared all Contract Documents, including the Technical Specification, so as to identify any errors, omissions, inconsistencies, constructability problems or any other defects or concerns of any kind (collectively referred to as "Contract Document Issues") and, therefore, Contractor agrees: (1) that it assumes and accepts all risk, cost and responsibilities arising from, or relating to, any Contract Document Issues; (2) that it expressly warrants that the Technical Specification and

1 the Contractor's Technical Proposal are adequate and sufficient to enable Contractor
2 to prepare detailed design drawings and construct the Vessels pursuant to the
3 requirements of the Contract Documents, without any increase in the Contract Price
4 or extension of Contract Time; and (3) that WSF expressly disclaims any
5 responsibility for, and the Contractor expressly waives its right to seek, any increase
6 in the Contract Price or extension of Contract Time, arising from, or related to, any
7 Contract Document Issues.

8
9 2.3. The Contractor warrants that: (i) it has determined the design, methods, materials,
10 labor, and equipment required to perform the Contract Work; (ii) that the Contract
11 Time is sufficient for completion of the Contract Work; (iii) and that the Contract
12 Price is adequate and reasonable in view of the cost of such methods, materials, labor
13 and equipment. The Contractor further represents and warrants that it has specifically
14 considered the risk and added expense of escalation in the cost of materials, labor,
15 equipment, or other aspects of construction of the Vessels during the period of time of
16 the Contractor's performance of the Contract Work and that the Contract Price
17 appropriately includes such risks and added costs. The Contractor shall be solely and
18 exclusively responsible for added costs incurred due to escalation of labor, material,
19 equipment, or other construction related costs during the period of time required for
20 its performance of the Contract Work.

21
22 2.4. The RFP and Bid Documents are incorporated into and made a part of this Contract
23 by reference. All warranties, undertakings and representations made by the
24 Contractor in the RFP and Bid Documents are binding obligations of the Contractor
25 under this Contract.

26
27 2.5. The Contractor warrants that it has reviewed all of the Contract Documents, including
28 all of the Addenda, and all other documents and materials which it deems necessary
29 or advisable to determine the nature and scope of the Contract Work and to determine
30 that the Contractor can complete the Contract Work by the Delivery Date. The
31 Contractor warrants that it is satisfied that the Contract Documents are sufficient in
32 form and substance to make such determinations with respect to the Contract Work.

33
34 2.6. The Contractor shall perform the Contract Work in accordance with the Contract
35 Documents. The Contractor shall provide all necessary or advisable design, planning,
36 scheduling, design development and engineering. The Contractor shall prepare all
37 Working Drawings, procurement specifications, purchase orders, and other items and
38 documentation as are required to supplement the information and implement the
39 requirements contained in the Contract Documents in order to accomplish the
40 substance and intent of the Contract Work.

41
42 2.7. Except where expressly set forth to the contrary in the Contract Documents, the
43 Contractor is wholly responsible for obtaining the approval and certifications of all
44 Authoritative Agencies as required, and the development, verification, and
45 submission of validated final As-Built Drawings.

1 2.8. The Contractor acknowledges and agrees that it has had the opportunity and
2 obligation, prior to submission of its Bid, to review the terms and conditions of the
3 Contract Documents and to bring to the attention of WSF any conflicts or ambiguities
4 contained therein. The Contractor further acknowledges and agrees that it has
5 independently reviewed the Contract Documents with legal counsel, and that it has
6 the requisite experience and sophistication to understand, interpret and agree to the
7 particular language of the provisions of the Contract Documents. Accordingly, in the
8 event of an ambiguity in, or dispute regarding, the interpretation of the Contract
9 Documents, they shall not be interpreted or construed against the person which
10 prepared them and instead other rules of interpretation and construction shall be used.
11

12 In the event of any ambiguity or uncertainty over any requirements set forth in the
13 Contract Documents, the Contract Documents shall be interpreted and construed,
14 insofar as is reasonably possible, to be consistent with the standards and criteria for
15 the performance of the Project.
16

17 The Contractor warrants that it has the skills associated with an enterprise engaged in
18 the business of ship construction of the magnitude of this Project and that it shall not
19 take advantage of any apparent error, omission, inconsistency or other defect in the
20 Contract Documents. The Contractor shall promptly notify WSF of any error,
21 omission, inconsistency or other defect that the Contractor may discover in the
22 Contractor Documents, and shall obtain specific instructions in writing regarding any
23 such error, omission, inconsistency or other defect before proceeding with the
24 Contract Work affected thereby.
25

26 2.9 The Contractor shall use its best efforts to cooperate with WSF and its
27 Representatives in every way possible.
28

29 2.10. The Contractor shall submit, in the format and at the frequency prescribed in the
30 Contract Articles and Specification Sections, all required Contract Data.
31

32 2.11 If the Vessels or vessel modules, hulls or other components are to be transported
33 outside the Puget Sound or its contiguous waters to perform Contract Work, transport
34 must be by heavy lift craft. Open ocean tows or self-propelled transits will not be
35 permitted.
36

37 2.12. The Contractor shall perform all Contract Work at the Shipyard or other facility
38 approved by WSF.
39

40 2.13. The Contractor shall complete the Contract Work and shall effect Delivery in
41 accordance with the "Delivery" Article.

1 **3. SPECIFICATIONS, DRAWINGS AND OTHER REQUIREMENTS**
2

3 3.1. The Specifications, consisting of the Technical Specification and the Shipyard
4 Specification for purposes of this Contract, are hereby incorporated into and made a
5 part of this Contract by reference.
6

7 Conflicts between the RFP, the Contractor's Approved Technical Proposal and/or
8 Authoritative Agencies shall be resolved by complying with the most stringent
9 requirements with no increase in Contract Price or Contract Time.
10

11 3.2. The Contractor is wholly and solely responsible for developing the detailed design
12 and all of the Working Drawings necessary or advisable to perform the Contract
13 Work.
14

15 3.3. The Contractor shall keep a complete set of the Contract Documents and Working
16 Drawings at the Contractor's work site at all times in an organized format readily
17 accessible for review by the WSF Representatives.
18

19 3.4. Compliance with Laws, Regulations and Codes
20

21 3.4.1. The Contractor warrants that it is familiar with all applicable Regulations.
22

23 3.4.2. As part of the Contract Work, the Contractor undertakes that all Contract
24 Work and the Vessel shall comply with the instructions, directives and
25 requirements of and, where required, be approved by the Authoritative
26 Agencies and pursuant to the Regulations, including, but not limited to:

27 A. Title 46, CFR;

28 B. Title 33, CFR;

29 C. Title 49, CFR;

30 D. WHO, "Guide to Ship Sanitation";

31 E. International Convention for the Safety of Life at Sea (SOLAS);

32 F. ABS Rules for Building and Classing Steel Vessels;

33 G. IEEE, Standard No. 45, "IEEE Recommended Practice for Electrical
34 Installations on Shipboard", except for new electric motors which shall
35 comply with 46 CFR 111.25; and

36 H. Applicable standards for electrical equipment and lighting as published
37 by UL.
38

39 3.4.3. Any oversight, misunderstanding or ignorance of the Regulations shall not
40 relieve the Contractor of its obligations and shall not justify additional
41 compensation or extension of the Contract Time.
42

- 1 3.4.4. The Contractor shall obtain all required permits and licenses of any kind,
2 including environmental licensing and compliance, and give or post any
3 required notices. Before start of work, the Contractor shall provide WSF
4 with copies of all required Contractor permits and licenses to operate.
5
- 6 3.4.5. Where the Technical Specification require that any aspect of the Contract
7 Work conform to certain standards such as the MARAD, USCG, ABS,
8 ASTM, AISI, SAE, IEEE, ISO, applicable Classification Society or other
9 recognized agency, institution or body, the applicable portions of those
10 standards shall be deemed incorporated in the Contract Documents to the
11 extent that it is so referenced, with the same order of precedence as the
12 highest level Contract Document in which the reference occurs. The
13 requirement shall be clearly indicated on any purchase specification, order
14 or other relevant documents developed and issued by or for the Contractor.
15
- 16 3.4.6. Unless WSF states otherwise in writing, all items, materials and work
17 requiring USCG approval shall be provided or made available by the
18 Contractor to the appropriate USCG Inspection Office in a timely manner to
19 enable the USCG to conduct its review and issue its directive for changes or
20 its approvals so as not to delay the Contract Work on the Vessel and
21 Delivery. Failure of any Contractor drawings to pass USCG review during
22 Phase III of this Design - Build Contract is the sole responsibility of the
23 Contractor regardless of WSF approval of associated work in the
24 Contractor's Technical Proposal.
25
- 26 3.4.7. Unless WSF states otherwise in writing, all items, materials and work
27 requiring ABS approval shall be provided or made available by the
28 Contractor to the ABS in a timely manner and in accordance with the ABS
29 rules. Compliance will allow the ABS to conduct its review and issue its
30 approval or directive for change.
31
- 32 3.4.8. Interpretation or representation by WSF of any laws, regulations or
33 ordinances as set forth in the Contract Documents or otherwise, takes no
34 precedence over the law, regulation or ordinance itself and the Contractor
35 shall satisfy itself as to the true construction and content of such laws,
36 regulations and ordinances on a current basis.
37
- 38 3.4.9. Attached hereto and by this reference incorporated herein, are Exhibit 1,
39 "Nondiscrimination and Equal Employment Opportunity" and Exhibit 2,
40 "Wages, Benefits and Rates." Without limiting its general undertaking to
41 comply with all Regulations, the Contractor specifically agrees to comply
42 with the above identified regulations identified herein and will follow and
43 implement said regulations in accordance with the procedures and practices
44 described therein.
45

- 1 3.4.10. All fees and charges of the Authoritative Agencies associated with their
2 duties as contemplated by the Contract Documents shall be for the account
3 of the Contractor.
4
- 5 3.5. Where requirements of the Contract Documents exceed the requirements of any
6 Authoritative Agency or approved marine construction and repair practices, the
7 Contract Documents shall prevail.
8
- 9 3.6. The extent of Contract Work on the Vessel is described in the Contract Documents.
10 Additional work undertaken by the Contractor, which has not been specifically
11 authorized by the Contract Documents, or authorized by Change Order, shall be at the
12 Contractor's sole risk and expense.
13
- 14 3.7. All materials, machinery, equipment, and components furnished by the Contractor
15 shall be new, currently in production, and currently supported by spare parts readily
16 available in the United States of America. All materials, machinery, equipment, and
17 components shall be of good commercial marine quality, in full compliance with the
18 Contract Documents, the requirements of the Authoritative Agencies, and suitable for
19 the service intended. All equipment, materials, or components used or installed in the
20 Vessel shall be free from defects and imperfections of manufacture which adversely
21 affect appearance or serviceability.
22
- 23 3.8. It is not practicable for the Contract Documents to enumerate all of the details,
24 fittings or appurtenances required to perform the work as described in the RFP
25 Package. Failure of the Contract Documents as existing on the date hereof to outline
26 or describe all of the details of the work described in the RFP Package or
27 contemplated therein shall not relieve the Contractor of its responsibility to perform
28 such work for the Bid Price.
29
- 30 3.9. WSF will provide Contract Documents to the Contractor in written format. When
31 available and if desired by the Contractor, WSF will also provide said documents in a
32 digital media format. Because such media is readily modified, WSF makes no
33 guarantee as to the validity of information provided thereon. Contractor use of
34 information provided as digital media shall be at its own risk without protest or claim
35 recourse.
36
37

38 **4. COORDINATION OF CONTRACT DOCUMENTS**

- 39
- 40 4.1. All of the Contract Documents are essential parts of the Contract and a requirement
41 occurring in one is binding as though occurring in all. They are intended to be
42 complementary in their description of the Contract Work.
43

1 4.2. There are no intentional conflicts or omissions in the Contract Documents. In the
2 event of any such conflicts or omissions, the order of precedence shall be as follows:
3

- 4 A. Change Orders
- 5 B. The Contract;
- 6 C. Technical Specification;
- 7 D. RFP Volume V (Owner Furnished Equipment)
- 8 E. Contractor's Approved Technical Proposal;
- 9 F. Other RFP documents;
- 10 G. Bid Documents; and
- 11 H. Prequalification and Phase I proposal documents.

12
13 Notwithstanding the order of precedence listed above, additional details and more
14 stringent requirements contained in a lower priority document will control unless the
15 requirements of the lower priority document present an actual conflict with the
16 requirements of the higher level document. Should a conflict or omission occur
17 between Volumes 1A /1B of the RFP and Volumes II, III, IV, and V of the RFP
18 Package, the Volumes II, III, IV, and V shall prevail. On plans and working drawings
19 calculated dimensions shall take precedence over scaled dimensions.
20
21

22 **5. CONTRACT PRICE**

23
24 5.1. WSF agrees to pay the Contractor the sum of
25 _____ Dollars total for the detailed design,
26 construction, delivery and other Contract Work for the four (4) new Vessels.
27

28 As adjusted from time to time as provided herein, such amount shall be referred to as
29 the "Contract Price" for the Contract Work.
30

31 5.2. The Contractor shall not be entitled to any adjustment in the Contract Price solely due
32 to: (i) inflation or escalation in the cost of labor, materials, equipment or services
33 occurring during the performance of the Contract Work; and/or (ii) any changes in
34 foreign currency exchange rates.
35

36 5.3. The Contractor shall not be entitled to any adjustment in the Contract Price because
37 of any change in laws, ordinances or regulations, except as specifically provided by
38 the following:
39

- 40 A. Changes in laws, ordinances or regulations within the scope of RCW
41 39.04.120; and
42

- 1 B. Changes in taxes on materials incorporated in or consumed for performance
2 of the Contract Work which are imposed by Federal or State Government,
3 or changes in the State Sales Tax, provided that the aggregate amount of all
4 such changes is greater than \$100.00 where:
5
6 1. For items included in the original Contract Work, the change takes
7 place after the Bid Due Date; or
8
9 2. For items covered by a Change Order, the change takes place after
10 the date on which the Contract or Change Order was executed.
11
12 C. Compensation will be made by negotiated Change Order for any changes
13 within the scope of RCW 39.04.120. Compensation will be increased or
14 decreased for the actual dollar amount of changes in Federal or State taxes
15 meeting the requirements of this Article; Provided that the Contractor, if
16 requested by WSF, certify in writing that no amount for any such change in
17 taxes was included in the Initial Price as a contingency reserve or otherwise;
18 and Provided further that the Contractor allow WSF to audit its records to
19 the extent necessary to substantiate any claim for compensation under the
20 provisions of this Article.
21
22

23 **6. PROGRESS PAYMENTS**

- 24
25 6.1. Except as otherwise noted or agreed, payment for completed Contract Work shall be
26 effected through periodic progress payments ("Progress Payments"), as provided
27 herein, subject to the Retainage. Progress Payments shall be applied for, determined,
28 and made for each Vessel separately.
29
30 6.2. Progress Payments shall be made monthly for work completed since the last
31 application for payment for each Vessel. The day of the month and any change to
32 the billing schedule on which the Progress Payment is to be paid will be mutually
33 agreed to by the WSF Representative and the Contractor's Representative. Any
34 construction undertaken by the Contractor without authority to proceed pursuant to
35 the terms of the "Working And As-Built Drawings" Article will not be eligible for
36 Progress Payments.
37
38 6.3. The Contractor shall, subject to review and approval by WSF, allocate the Contract
39 Price among the four Vessels for the purposes of preparing its Progress Estimate and
40 determining Progress Payments for each prospective Vessel, provided that such
41 allocations for each Vessel may not exceed the following percentages of the Contract
42 Price: Vessel 1 Twenty-eight (28) %, Vessel 2 Twenty-five (25) %, Vessel 3
43 Twenty-five (25) %, Vessel 4 Twenty-five (25) %. Such approved allocation of the
44 Contract Price of each Vessel shall be referred to as the Definite Work Price for each
45 respective Vessel. Prior to submission of the first Progress Estimate (as defined in
46 Article 6.4), the Contractor shall prepare and submit to WSF for approval a standard

Progress Estimate form for each Vessel. The elements of the Progress Estimate form will reflect the items in the Master Construction Schedule which is required by the Technical Specification. The Progress Estimate form shall provide a line item breakdown by the Shipyard Specification as contained in the approved Technical Proposal and elements of the work in accordance with the Contract Documents, with Weighted Factors reflecting Contractor Labor, Contractor Material, Subcontractor Labor (including detailed design) and Subcontractor Material work and other deliverables for each line item totaling one hundred percent (100%) of the Definite Work Price for each Vessel. WSF shall have the right to adjust the Contractor's line item price allocations and line item breakdown as necessary to (i) prevent unreasonable payment acceleration due to unbalanced line item price allocations; and (ii) to provide sufficient line items for accurately calculating physical progress as determined by WSF.

- 6.4. Not less than fourteen (14) days before each Progress Payment is due, the Contractor shall submit to WSF a Progress Estimate using the form specified in Article 6.3 showing: (i) the percentage of completion of each line item at the beginning of the billing period; (ii) the change during the billing period; and (iii) the total current completion at the end of the billing period. The amount owed for the period shall be computed from the percent change for the period and shall separately total Contractor Labor, Contractor Material, Subcontractor Labor and Subcontractor Material, and deliverables. WSF shall have the right to change the percentage and resulting payment up or down as deemed necessary to properly reflect progress on each line item. Payment for any work, by the Contractor or any Subcontractor, shall be withheld until all required Intent to Pay Prevailing Wage and Request to Sublet forms, and subcontracts noted in the "Subcontractors" Article are submitted to and accepted by WSF.

No payment request shall include amounts the Contractor does not intend to pay a Subcontractor because of a dispute or other reason. If, after making the request for payment, but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and WSF written notice of the remedial actions that must be taken as soon as practical after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within ten (10) working days, or such earlier time as may be required under the subcontract, after the Subcontractor satisfactorily completes the remedial action identified in the notice.

- 6.5. Every Change Order shall be separately progressed for Contractor Labor, Contractor Material, Subcontractor Labor and Subcontractor Material work and shall be identified as a separate line item in the Progress Estimate. Progress Payments for Change Order work shall otherwise be made in the manner provided for in this Article.

1
2 6.6. As a precondition to each Progress Payment, the Contractor must also submit a
3 Release of Claims Certification (as discussed below), a QA Manager Certification as
4 provided in the Technical Specifications and copies of updated Schedules listed in the
5 "Schedules" Article and the Technical Specification. Submission by the Contractor
6 of a Progress Estimate constitutes a certification by the Contractor that the work is
7 current on the Contractor's Master Construction Schedule unless otherwise
8 specifically noted on the updated schedule.
9

10 6.6.1. Each Progress Estimate shall include, a Waiver and Release on Progress
11 Payment in the form attached hereto as Exhibit 3 executed by the Contractor
12 releasing WSF from any and all claims of any kind or nature to an adjustment
13 in Contract Price or Contract Time unless said claim(s) are noted on the
14 certification form as an exception to the waiver/release. For each claim noted
15 on the certification form, the Contractor shall also indicate whether a protest
16 or claim has been filed by the Contractor pursuant to the "Procedure and
17 Protests by the Contractor" and "Claims" Articles and, if so, the date such
18 protest or claim was filed. Said waiver/release shall be effective for the period
19 up to the date of the Progress Payment.
20

21 Pursuant to the terms of this Article, any claim or potential claim for an
22 adjustment in the Contract Price and/or Contract Time for the period covered
23 by the certification which is not listed on the certification shall be deemed
24 waived. Compliance with this Article shall not constitute a substitute for, and
25 does not relieve the Contractor of any obligations to provide notice, protest, or
26 to take any other action as required under any other provisions of this
27 Contract.
28

29 6.6.2 Each Progress Estimate shall include a certification in the form attached
30 hereto as Exhibit 4 signed by each Subcontractor or supplier that provided
31 services, materials or equipment included in any preceding Pay Estimate
32 request for which Contractor received payment, certifying that said
33 Subcontractor or supplier has received payment in full for such services,
34 materials or equipment, except only for retainage and amounts in dispute,
35 stating any amounts in dispute, and waiving and releasing any liens, claims or
36 security interests, known or unknown, suspected or unsuspected, arising out of
37 such services, materials or equipment against any person or property
38 whatsoever, except potential liens and claims against retention funds or bonds
39 for retainage and amounts in dispute.
40

41 6.6.3 Each Progress Estimate shall include a certificate signed by the Project QA
42 Manager certifying that: 1) all Contract Work (including that of designers,
43 subcontractors, suppliers, fabricators, and builders) has been tested and/or
44 inspected by the Contractor's QA staff consistent with the QMP; all Contract
45 Work, except as specifically noted in the certification, conforms to the

requirements of the Contract; and the QMP and all of the measures and procedures provided therein are functioning properly and are being followed.

6.7. All progress billing and estimate documents shall be prepared and submitted by the Contractor (i) on diskettes using Microsoft EXCEL (latest version) software, and (ii) signed hard copy, to ensure certification of the data.

6.8. The Progress Estimates are tentative and made only for the purpose of determining Progress Payments. Progress Estimates will not be evidence of progress or acceptability of the Contract Work for any other purpose. Acceptance of any Progress Estimate by WSF shall not constitute an acceptance, admission or release by WSF as to the status of the Contract Work.

6.9. Upon approval of the Progress Estimate by WSF, WSF shall make a Progress Payment to the Contractor reflecting a percentage of the Contract Price equal to the increase in the percentage of completion between the Project Estimate for the prior payment and the Progress Estimate for the current payment period. Retainage is part of the Progress Payment but is paid to a separate account established in accordance with paragraph 7.11. below.

All payments made to Contractor for or on account of work performed or materials provided by a Subcontractor or supplier shall be deemed paid in trust to the Contractor for the benefit of, and distribution to, such Subcontractors and suppliers. The Contractor shall promptly pay each Subcontractor or supplier, upon receipt of payment from WSF, out of the amount paid to the Contractor on account of the Subcontractor's or supplier's portion of the Contract Work, the amount to which such Subcontractor or supplier is entitled. The Contractor shall, by appropriate agreement with each Subcontractor require each Subcontractor to make payments to lower tier Subcontractors or suppliers in a similar manner.

WSF will normally process and issue progress payments within fifteen (15) days from receipt of invoice. However, payment will not be considered late if a check or warrant is mailed within thirty (30) days.

Under Chapter 39.76 RCW, if WSF fails to make timely payment(s), the Contractor may invoice for no more than 1% per month on the amount overdue or a minimum of \$1.00.

6.10. Payments for Materials on Hand

6.10.1. Progress Estimates may include the cost of materials to be incorporated into the Vessel if such materials: (i) have been paid for by the Contractor, as evidenced by written proof of payment; (ii) meet the requirements of the Contract Documents to the extent they are applicable; (iii) are delivered to or stockpiled in the Shipyard or another storage site approved in writing by WSF; and (iv) are receiving proper protection, preservation and service in

1 storage, including insurance or other procedures deemed necessary by WSF
2 in its sole discretion to establish WSF's title to such materials and to
3 otherwise protect WSF's interest in such materials. Material not yet
4 incorporated in the Vessel, for which the Contractor is requesting payment,
5 shall have identification by a percent complete reflecting the dollar value of
6 the requested payment in the applicable line item of the Progress Estimate
7 document required above.
8

9 6.10.2. Progress Payments for materials on hand shall not constitute Acceptance,
10 and any faulty material discovered will be rejected even though partial or
11 complete payment has been made for that material.
12

13 6.11. The Retainage under this Contract shall be reserved by WSF as a trust fund for the
14 protection and payment of: (i) the claims of any person arising under the Contract;
15 (ii) the State with respect to taxes imposed pursuant to Title 82 RCW which may be
16 due from the Contractor' and (iii) other claims as allowed by law. WSF will reserve
17 and release the Retainage in accordance with the provisions of RCW 60.28.011.
18

19 6.12. In order to make Final Payment to the Contractor, the Contractor must submit to the
20 WSF Representative a completed Final Contract Voucher Certificate form, and all
21 other documentation required by this Contract and by law to accomplish Final
22 Acceptance of all Contract Work. This includes, but is not limited to, the Affidavit of
23 Prevailing Wages Paid for the Contractor and each Subcontractor (processed by
24 Labor and Industries), the Quarterly Report of Amounts Credited as DBE
25 Participation and other documents.
26

27 The Final Contract Voucher Certificate shall be signed by the Contractor, and shall
28 constitute a full and complete release of any and all claims of the Contractor against
29 WSF and the State except such claims, and stated amounts, as are expressly identified
30 and accepted by the Contractor on the Final Contract Voucher Certificate. Claims
31 that are not reserved by the Final Contract Voucher Certificate are invalid and waived
32 by the Contractor. The Final Estimate payment will pay any remaining Progress
33 Payments and begin the process of final Retainage release.
34

35 6.13. The Contractor's rights under this Article to receive Progress Payments and the
36 Retainage are further subject to all applicable terms of the Contract Documents and
37 all relevant provisions of law.
38
39

40 **7. SCHEDULES**

41

42 7.1 The Contractor shall be responsible for preparing and delivering all required
43 schedules and updates thereto, including without limitation the Master Construction
44 Schedule, in accordance with the Contract Documents. Approval of any submitted
45 schedules or any other schedule prepared by the Contractor shall not be construed to
46 assign responsibility of performance or contingencies to WSF or to relieve the

Contractor of its responsibility to adjust staffing, equipment and work schedules as required to ensure completion of Contract Work within the prescribed Contract Time.

8. CONTRACT REPRESENTATIVES

8.1. Contractor's Representatives

8.1.1. Prior to the commencement of the Contract Work, the Contractor shall appoint in writing its Contractor's Representatives. The Contractor shall designate the first three (3) levels of direct Contract management / supervision, down to and including the foreman level, plus the functional responsibilities and title of each, i.e., Superintendent, etc.

8.1.2. The appropriate Contractor's Representative shall be continually present at all sites where Contract Work is being performed.

8.1.3. The Contractor shall remove incompetent, careless, or negligent employees immediately upon written request of WSF, and the Contractor shall immediately provide a suitable replacement with no adjustment in the Contract Price.

8.1.4. The Contractor agrees to assign to this Contract those key persons who were identified in the RFP Documents, and to maintain its designated Contractor Representatives. No substitution shall be made without prior notification to and concurrence of the WSF Project Engineer in accordance with this requirement.

8.1.5. All proposed substitutes shall have qualifications equal to or higher than the qualifications of the person to be replaced. The WSF Project Engineer shall be notified in writing of any proposed substitution at least fifteen (15) days in advance of the proposed substitution. Such notification shall include: (i) an explanation of the circumstances necessitating the substitution; (ii) a complete resume of the proposed substitute; and (iii) any other information requested by the WSF Project Engineer to enable him/her to judge whether or not the Contractor is maintaining the same high quality of personnel as previously identified to WSF.

8.2. WSF's Representatives

8.2.1. Prior to commencement of the Contract Work, WSF shall appoint in writing its WSF Representatives whose authority and responsibility shall be stated; provided however, only the WSF Project Engineer shall have the authority to direct or require the Contractor to perform work different from, or in addition to, the Contract Work or authorize a change to the Contract Price or Contract Time.

- 1
2 8.2.2. The appropriate WSF Representatives shall be kept advised as to the progress
3 of the Contract Work and shall be provided free access to the Vessel or any
4 parts of the Contract Work at any time that the Vessel is in the Shipyard
5 and/or Contract Work is in progress. Any questions concerning responsibility
6 or scope of authority of WSF Representatives should be directed to the Project
7 Engineer.
8
- 9 8.2.3. Questions or comments which may arise during the performance of the
10 Contract Work concerning the content, intent, or other interpretation of the
11 Contract Documents, or other circumstances which require a response by the
12 WSF Representative, shall be submitted in writing, in accordance with the
13 provisions of the "Contract Reports" Article, to the WSF Project Engineer.
14 The individual preparing the submission and the individual responsible for the
15 performance of the work shall be identified. A reasonable response required
16 date shall be indicated, but such date does not constitute a contractual
17 requirement that response be made by that date.
18
- 19 8.2.4. A WSF Representative may utilize the same format and form as the
20 Contractor to initiate informal communication concerning inspection
21 observations, work performance, and other similar items. All formal
22 communications regarding matters that could affect the Contract Work, Time,
23 or Price must be by Contract Report under WSF's number sequence system
24 pursuant to the "Contract Reports" Article.
25
- 26 8.2.5. Subject to the disputes process herein, the WSF Project Engineer's decision
27 will be final on all questions including, but not limited to, the following:
28
- 29 A. Quality and acceptability of materials and Contract Work;
 - 30
 - 31 B. Acceptability of rates of progress on the Contract Work;
 - 32
 - 33 C. Interpretation of the Contract Documents;
 - 34
 - 35 D. Changes in the Contract Time;
 - 36
 - 37 E. Fulfillment of the Contract by the Contractor; and
 - 38
 - 39 F. Payments under the Contract.
40
- 41 8.3. WSF Personnel Facilities
42
- 43 The required WSF Personnel Facilities are described in Exhibit 6, WSF Personnel
44 Facilities, attached and incorporated herein.

9. CONTRACT REPORTS

- 9.1. Contract Reports (CRs) shall be used by the Contractor for the purpose of: (i) alerting WSF to actual or potential situations of impact to Contract Price and/or the Contract Time; (ii) establishing an early dialogue between the Contractor and WSF with regard thereto; and (iii) submitting reports of conditions found, and requests for clarification or information.
- 9.2. Contract Reports (CRs) shall also be used by WSF to: (i) alert the Contractor to situations that may result in a finding of unsatisfactory performance; (ii) notify the Contractor of unsatisfactory conditions; (iii) order work in accordance with the "Scope of Work" and/or the "Contract Changes" Articles; and (iv) categorize and reference any issues for Protests, and Claims.
- 9.3. When the Contractor identifies an item or situation ("Situation") that may impact the Contract Time or the Contract Price, the Contractor shall: (i) verbally report the Situation to WSF within twenty-four (24) hours; and (ii) provide a written CR to WSF within five (5) days from the date of identification of the Situation.
- 9.3.1 Failure of the Contractor to submit a timely written Contract Report to report Situations known to the Contractor, or which reasonably should have been known to the Contractor, that could or will impact the Contract Price and/or the Contract Time shall constitute a waiver and release by the Contractor of any claim or right to seek additional compensation or performance time or any adjustment of Contract Price or Contract Time on account of, or due to, such Situation.
- 9.4. WSF will not allow preparation charges for CRs initiated by the Contractor for any reason.
- 9.5. CRs shall be submitted to the WSF Project Engineer in a mutually agreed format, but shall include, at a minimum, the information required herein. Each CR shall be entitled "Contract Report," dated, numbered sequentially, and shall set forth the following based on the best and most complete information then known or available to the Contractor:
- 9.5.1. The nature of the Situation prompting the report;
- 9.5.2. The date on which the Situation was identified for reporting;
- 9.5.3. The anticipated direct and consequential effects of the Situation upon the Contract Time or Contract Price, if any;
- 9.5.4. Identification of the supplies and/or services which are or may be affected;

- 1 9.5.5. Identification of the Specification, Drawing, or other Contract Document
2 relative to the Situation;
3
4 9.5.6. Details as to the specific physical location of the Situation on the Vessel,
5 including specifics about equipment, name, manufacturer, etc.; and
6
7 9.5.7. The Contractor's recommended resolution for the reported Situation.
8
9 9.5.8 The names of the individual preparing the Contract Report and the
10 individual responsible for the performance of the work.
11
12 9.5.9. A realistic "response required" date.
13
14 9.6. Follow-up status reports of each Contract Report, identified by the original CR
15 number, shall be furnished weekly or more frequently as required by the WSF
16 Representative. A final follow-up report shall be furnished immediately following
17 resolution of each reported Situation.
18
19 9.7. The submission of a CR shall not constitute a substitute for, and does not relieve the
20 Contractor of any obligations to provide notice, protest, or to take any other action as
21 required under any other provisions of this Contract.
22
23

24 **10. WORKING AND AS-BUILT DRAWINGS**

25

- 26 10.1. When submitting Working Drawings for approval, the Contractor shall state the latest
27 date on which it wishes to have the Working Drawings returned with WSF's
28 comments and/or approval. WSF shall endeavor to return the Working Drawings by
29 that specified date or within twenty-one (21) days from the receipt of those Working
30 Drawings at the WSF Project Office, whichever event last occurs. It may occur that
31 the volume of submittals could overwhelm WSF resources, so WSF has the right to
32 compel the Contractor to identify and prioritize the Working Drawings that are most
33 likely to impact the Contractor's critical path for the Contract Work. The Contractor
34 shall respond to a request for prioritization of Working Drawing review within four
35 (4) days of receiving such a request. Any such response should include appropriate
36 schedules that will demonstrate the prioritization sequence. The parties shall
37 negotiate a revised schedule for non-priority Working Drawing review.
38

39 Production work, including prefabrication, shall not be started on any structure,
40 system, or subsystem until such time as Working Drawings and/or other drawings and
41 submissions required by the Contract Documents that are relevant to that production
42 work have been submitted, reviewed, and approved by WSF. Any production work
43 undertaken by the Contractor without authority to proceed pursuant to the terms of
44 this Article will: (i) not be eligible for Progress Payments, and (ii) be at the
45 Contractor's risk, including any and all costs of delays or disruptions resulting from
46 performance of the work prior to WSF approval.

Any WSF failure to return Working Drawings to the Contractor within twenty-one (21) days after receipt thereof, or such later date designated by the Contractor, shall not be grounds for an adjustment to the Contract Price or Contract Time. The Contractor's sole remedy shall consist of its right to submit a written request to WSF for authorization to proceed without Drawing approvals.

Except as agreed to by WSF, Drawings submitted earlier than scheduled do not start the review period; nor does submittal with significant errors, omissions, and or reservations constitute submittal for the purposes of this Article.

10.5. The WSF Representative will review each Working Drawing submitted. Any review by WSF or failure of the WSF Representative to find errors or omissions in the Contractor's calculations, specifications, or drawings shall not in any manner relieve the Contractor of its responsibilities under the Contract Documents.

10.6 Approval by the WSF Representative of the Contractor's Working Drawings does not relieve the Contractor of responsibility to comply with the Contract Documents or for the accuracy of dimensions and details, locations or interferences; nor does mutual agreement of dimensions or details, locations or interferences relieve the Contractor of the responsibility for the conformity and compliance of his Working Drawings with the Contract Documents and with the requirements of the Authoritative Agencies.

10.7. Detail requirements for Working Drawings and Working Drawings certified as As-Built Drawings are described in the Technical Specification. Working Drawings certified as As-Built Drawings shall be submitted to WSF within thirty (30) days of the Delivery Date for each Vessel.

11. QUALITY ASSURANCE AND CONTROL PROGRAM

11.1. The Contractor will establish and maintain a Quality Management Program (QMP) and, within twenty (20) days after the Notice to Proceed, submit to the WSF Representative for approval said QMP that specifically addresses the Contract Work. The program shall contain provisions for inspection and reporting by WSF of all in-process production activities.

11.2. The QA/QC program shall, among other things, describe the QA and QC organization, identify key personnel by name, provide contact telephone numbers and contain those elements outlined in the Technical Specification.

11.3. QA and QC are solely the responsibility of the Contractor. Inspections, reviews and approvals by WSF and Authoritative Agencies in no way relieve the Contractor of its responsibility to assure the quality and control of Contract Work and the material condition and readiness of the Vessel for service at Delivery.

12. CONFIGURATION CONTROL AND MANAGEMENT

- 12.1. Unless otherwise authorized by WSF, all changes in configuration of the Vessels which are the responsibility of the Contractor as a result of Contractor errors and/or omissions on any one of the Vessels are to be implemented on the other three Vessels. The Contractor shall have a system in place for configuration control in order to ensure that all changes in configuration made on any one of the Vessels is documented and implemented on follow-on Vessels. Similarly, the system is to provide for implementation of changes in configuration on earlier vessels.

In instances where WSF determines in its sole discretion not to authorize implementation of a change on other(s) of the Vessels, As Built drawings for the vessels will show the differences in configuration.

Changes in configuration as a result of Change Orders will address implementation on applicable Vessels. The Contractor will ensure that such changes are implemented on follow-on Vessels and back fit on earlier Vessels as provided in the respective Change Order(s).

13. INSPECTIONS AND APPROVALS

- 13.1. The Contractor is to perform the Contract Work under the inspection, and subject to the approval, of WSF and the Authoritative Agencies.
- 13.2. Inspections, tests, measurements, estimates, certifications or other acts or functions performed by a WSF Representative are recognized as being for the sole purpose of assisting WSF to determine with reasonable assurance that the workmanship, materials, rate of progress and quantities provided comply with the Contract Documents. These acts or functions shall not be construed as relieving the Contractor from its responsibilities for full compliance with the Contract Documents and proper performance of the Contract Work.
- 13.3. Without limiting the foregoing, the Contractor acknowledges that any inspection of the Contract Work by WSF or any failure of the WSF Representative to discover materials or workmanship that are not in accordance with the Contract Documents shall not be deemed as acceptance of the Contract Work or materials or as a waiver of the provisions of the Contract Documents. No payment shall be construed as acceptance of any Contract Work or material that is not in compliance with the requirements of the Contract Documents. Approval of any item will not in any case relieve the Contractor of responsibility for satisfactory installation and operation of any such item.
- 13.4. The Contractor is solely responsible for all QC/QA and for properly preparing and presenting all completed Contract Work for acceptance and for giving adequate notice that the Contract Work in question is complete and ready for inspection.

Adequate notice is: (i) at least twenty-four (24) hours prior notice to the appropriate WSF Representative; and (ii) as required by mutual agreement between the Contractor and the Authoritative Agencies. Inspections that may be required after normal working hours, on weekends or holidays shall be scheduled no less than eight (8) hours before the end of the normal working day preceding the requirement.

13.5. When submitting an item for approval, the Contractor shall specifically call attention to all departures from the Contract Documents, any previously approved Working Drawings and any additional instructions received from the WSF Representative.

13.6. Workmanship and materials not meeting the requirements of the Contract Documents shall be made to satisfy such requirements. Unsuitable work or material shall be reworked and/or replaced at the Contractor's sole expense notwithstanding that the work or materials may have been previously inspected or that a Progress Payment for the work has previously been made.

13.7. Covered Contract Work

13.7.1. The Contractor shall remove or uncover such portions of the completed Contract Work for inspection as directed by the WSF Representative. The Contractor may initiate a request for compensation for uncovering the Contract Work provided that: (i) there are no defects found in the uncovered work, and (ii) WSF did not originally reject the work after WSF was provided the opportunity to inspect the original work before it was covered. Should the Contract Work so exposed or examined prove unacceptable to WSF, the uncovering, removing, or replacing of the covering and the making good of parts removed, replaced, or repaired shall be at the Contractor's expense.

13.7.2. Notwithstanding the foregoing, any Contract Work that is closed or covered prior to proper notification to WSF and/or Authoritative Agencies shall be at the Contractor's risk and shall be uncovered for WSF inspection and approval, all at the Contractor's expense whether or not the Contract Work proves acceptable to WSF and the Authoritative Agencies.

13.8. Subject to the "Procedure and Protests by the Contractor" and "Claims" Articles, WSF's decision will be final on all questions in the course of Contract Work inspection.

13.9. Nothing in this Contract requires WSF to provide the Contractor with direction or advice on how to perform the Contract Work. If WSF approves or recommends any method or manner for doing the Contract Work or producing materials, the approval or recommendation shall not: (i) guarantee that following the method or manner will result in compliance with the Contract Documents; (ii) relieve the Contractor of any risk or obligation under the Contract Documents; or (iii) give rise to any liability of WSF.

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- 1 E. Provide and maintain a safe moorage for the Vessel including piers, mooring
2 lines, fenders, camels, and other such devices as required to ensure the safety
3 and integrity of the Vessel.
4
- 5 F. Provide covers that will minimize the entry of water or snow for all openings
6 to the weather through which seawater, rain or snow might enter the Vessel
7 during periods of inclement weather. The covering shall be affixed in such a
8 manner as to preclude removal by the action of winds of velocities normally
9 experienced in the geographical location where the Contract Work will be
10 performed. During periods when temperatures may be expected to be below
11 freezing, precautions shall be exercised to protect all piping systems,
12 machinery and equipment, or other components of the Vessel, whether
13 installed, onboard awaiting installation or removal, or stored ashore, from
14 freezing. The Contractor shall be wholly responsible for any and all costs
15 incurred to repair or replace piping systems, machinery or equipment, or
16 components damaged by the failure to protect them from freezing.
17
- 18 G. Provide and maintain comprehensive and effective fire prevention, fire and
19 flooding detection, and fire fighting programs and systems sufficient to ensure
20 the safety and integrity of the Vessel.
21
- 22 H. Provide personnel trained in shipboard fire fighting techniques and trained to
23 cooperate with and assist local fire fighting organizations. Such personnel
24 shall be assigned in writing with a current copy of the assignment provided to
25 the WSF Representative.
26
- 27 I. Provide sufficient shore fire lines to ensure an adequate supply of fire fighting
28 water at sufficient pressure, and maintain an adequate number of tested fire-
29 hoses aboard the Vessel to effectively fight fires at any location in the Vessel.
30 Easily read pressure gauges shall be installed in readily accessible locations at
31 a point where the hoses are attached to shore, and at the most remote location
32 to which the hoses are led. If onboard hose station/manifolds are used, they
33 shall be provided with easily read pressure gauges indicating the pressure
34 being supplied to the station.
35
- 36 J. Provide and maintain portable fire extinguishers in sufficient quantity, and of
37 the appropriate type, to combat local fires of any class. Extinguishers shall be
38 currently inspected, tagged, and stored in readily accessible racks. Empty
39 extinguishers shall be prominently marked as "EMPTY" and removed from
40 the Vessel as soon as expended.
41
- 42 K. Provide sufficient fire watches, including roving watches as may be required,
43 to ensure that fires that may be inadvertently started by welding sparks or
44 heat, electrical malfunction, or spontaneous combustion are detected, reported
45 and promptly extinguished. A welder or burner may not act as his own fire
46 watch.

- 1
- 2 L. Lock wire or otherwise lock in the fully closed position, all valves connecting
- 3 directly to the sea, except while in actual use, whenever the Vessel is
- 4 waterborne. If piping has been removed from the inboard flange or other
- 5 valve connection, the valve shall be provided with a blank cover. Valves shall
- 6 be provided with a positive means of readily ascertaining that they are in fact
- 7 fully closed or blanked.
- 8
- 9 M. Provide around-the-clock, seven (7) days a week on-board surveillance patrols
- 10 in sufficient number to ensure the safety and watertight integrity of the Vessel.
- 11 The patrol(s) shall maintain a log, either through key stations or logbook, of
- 12 their activity and observations. Copies of all logbooks shall be made available
- 13 to the WSF Representative upon request.
- 14
- 15 N. Provide tank and bilge cleaning, and gas freeing services, as required to
- 16 ensure that areas in which flammable, toxic or other hazardous gasses or
- 17 vapors may be present are clean, gas free, and have a sufficient oxygen
- 18 concentration prior to the entry of personnel or any heat or spark producing
- 19 work is undertaken. No space which is suspected of having flammable, toxic,
- 20 or other hazardous gasses or vapors remaining in flammable, explosive, or
- 21 toxic quantities, or which has an oxygen deficient atmosphere shall be
- 22 entered, or hot work undertaken therein, until the space has been certified, and
- 23 an appropriate certificate posted, "SAFE FOR WORKERS", or "SAFE FOR
- 24 HOT WORK". A marine chemist currently certified by the National Fire
- 25 Protection Association (NFPA) shall provide certificates and initial
- 26 certification. The Contractor shall maintain the gas free condition throughout
- 27 the period during which personnel may work in the space(s) or hot work may
- 28 be performed in the space(s) as required by WAC 296-304-02009 (or
- 29 pertinent local ordinances if they impose conditions more stringent than the
- 30 WAC).
- 31
- 32 O. Ensure that all special safety precautions or requirements imposed by the
- 33 certifying marine chemist are implemented and maintained throughout the
- 34 work period. If the gas free or oxygen concentration condition of any space is
- 35 in doubt, the WSF Representative may require re-testing and certification at
- 36 no additional expense to WSF.
- 37
- 38 P. Provide and maintain readily accessible, or have available, de-watering
- 39 equipment of such quantity and capacity as to minimize damage to the Vessel
- 40 and its equipment in the event of a worst case flooding. For the purpose of
- 41 estimating required de-watering capacity worst case flooding may be defined
- 42 as flooding occurring through the single largest installed sea chest located
- 43 below the light-ship water line, that all watertight doors between floodable
- 44 spaces are open and inoperable, and that bulkheads separating spaces adjacent
- 45 to that in which the flooding is occurring have been breached below the light-
- 46 ship water line by holes equal in cross-section to the hull penetration through

1 which the flooding is occurring. De-watering equipment of sufficient capacity
2 to stop the continued rise in water level occurring in the worst case flooding
3 scenario shall be located close enough to the Vessel so that it can be in full
4 capacity operation within forty-five (45) minutes of the initial observation and
5 subsequent reporting of the uncontrolled flooding.
6

7 Q. Provide and maintain additional de-watering equipment and/or services of
8 sufficient quantity and capacity as to begin to de-water spaces flooded in a
9 worst case flooding, at a location near enough to the work site so as to be able
10 to respond to the emergency and begin de-watering within one (1) hour of the
11 requirement to provide such equipment. The WSF Representative will be
12 provided an inventory list of all of the de-watering equipment and its exact
13 location in relation to the Vessel.
14

15 R. Provide and maintain a centralized, monitored fire and flooding alarm system
16 which provides a minimum of two clearly marked pull stations at each deck,
17 including one at each brow, and audible alarms which can be heard at the
18 alarm monitoring station(s) and throughout the Vessel under working
19 conditions.
20

21 14.5. **Health, Safety and Security Plan.** The Contractor shall be responsible for
22 preparing, and submitting for WSF approval, no later than the Pre-Arrival
23 Conference, a detailed, comprehensive, Health, Safety and Security Plan (HSSP)
24 which shall provide a thorough overview of the work procedures, methods,
25 equipment and material, and protective programs that will be used during
26 performance of the Contract Work. **No production work shall begin on any Vessel**
27 **until the HSSP has been submitted and approved.** The HSSP shall address each of
28 the hazards discussed in the foregoing, and shall be subject to WSF approval for
29 compliance with the Contract Documents.
30

31 14.5.1. The HSSP shall be based on the requirements of WAC 296-62-077, 07517,
32 07521 and the Health, Safety and Security Plan Subsection of Section 100 of
33 the Technical Specification, and shall contain detailed procedures which
34 include at least the following major sections:
35

- 36 A. A listing of all current applicable laws, rules, and regulations
37 whether local, State, or Federal;
38
39 B. Details of work site preparation, personnel protective equipment,
40 decontamination procedures, spill containment plan, and safety
41 planning; and
42
43 C. A sequence of work, a stop work and re-start plan, safety planning,
44 and emergency procedures, including vessel evacuation and
45 personnel accountability plans.
46

- 1 14.5.2. A person certified and qualified in health, safety and security procedures
2 shall prepare the HSSP. WSF will respond within twenty (21) days of
3 receipt, with its approval, approval-with-comment, or disapproval.
4
- 5 14.5.3. The Contractor shall include with the HSSP, a description of prior
6 experience with work as defined herein, and the prior experience of any
7 Subcontractors to be used.
8
- 9 14.5.4. The HSSP shall designate a primary and secondary member of the
10 Contractor's staff to be the person in charge by name, position, work phone
11 number and 24-hour emergency after work phone number; and identify
12 those Contractor persons, and their specific responsibilities, making up a
13 "quick action" response team for the various hazards likely to be
14 encountered. This team shall be responsible for setting up additional
15 protection and support before and during heavy weather conditions, and
16 directing support from all Shipyard and subcontracted services.
17
- 18 14.5.5. The HSSP must be in sufficient detail to permit WSF to make an informed
19 judgment as to the Contractor's understanding of the serious nature of the
20 health, safety and security issues relating to the Vessel and to the Contract
21 Work, and a familiarity with the laws, rules, and regulations pertaining
22 thereto, and the Contractor's ability to perform the task.
23
- 24 14.5.6. Prior to commencement of any work, the Contractor shall provide to WSF
25 five (5) copies of the approved HSSP. The HSSP shall be presented in
26 loose-leaf book format on 8 1/2 x 11 inch heavy bond paper. It shall be
27 titled and indexed and all copies shall be serial-numbered.
28
- 29 14.6. The Contractor shall provide protection from damage for all affected Vessel
30 storerooms, lockers, etc., and their contents, during performance of the Contract
31 Work.
32
- 33 14.7. During performance of the Contract Work, the Contractor shall erect and maintain
34 on-site signs satisfactory to WSF, identifying the project by Contract Name and
35 indicating that WSF is sponsoring the project.
36
- 37 14.8. There shall be no smoking aboard the Vessel during performance of the Contract
38 Work. This restriction applies to all personnel aboard the Vessel, including but not
39 limited to Contractor personnel, Subcontractors, other workers, and WSF personnel.
40 The Contractor shall be responsible for posting all appropriate or required "No-
41 Smoking" signage aboard the Vessel.
42
- 43 14.9. Nothing in this Article shall relieve the Contractor from any responsibility, or duty or
44 obligation that would otherwise be imposed upon the Contractor by the Contract, law
45 or equity. The Contractor acknowledges and agrees that it is solely and completely
46 responsible for conditions at the Shipyard and any related work site, including safety

1 of all persons and property, during performance of the Contractor Work. In addition
2 to the requirements imposed by this Article, the Contractor shall maintain the
3 Shipyard and any related work site and perform the Contract Work in a manner that
4 meets all statutory and common law requirements for the provision of a safe place to
5 work. The Contractor's obligations in this regard shall apply continuously and shall
6 not be limited to working hours. Any review by WSF of the Contractor's
7 performance in this regard, or compliance with the requirements of this Article, shall
8 not be construed to include a review of the adequacy of the Contractor's safety
9 measures in, on, or near the Shipyard or other related work site. The Contractor shall
10 be solely and exclusively responsible for initiating maintaining and supervising all
11 safety precautions and programs in connection with performance of the Contract
12 Work. No notice, action or inaction by WSF relating to safety or property protection
13 or the violation thereof will: (1) relieve the Contractor of sole and complete
14 responsibility for such violation and the correction thereof or the sole liability of the
15 consequences of such violations; (2) impose any obligation upon WSF to inspect or
16 review the Contractor's safety program or precautions or to enforce the Contractor's
17 compliance with the requirements of this Article; (3) impose any continuing
18 obligation upon WSF to ensure the Contractor performs the Contract Work safely or
19 to provide such notice to the Contractor or any other person or entity; (4) affect the
20 Contractor's sole and complete responsibility for performing the Contract Work
21 safely or the Contractor's responsibility for the safety and welfare of its employees;
22 or (5) affect the Contractor's responsibility for the protection of property, employees,
23 Subcontractors and their employees or others.
24
25

26 **15. OWNER - FURNISHED EQUIPMENT**

- 27
- 28 15.1. Certain equipment listed and described in the Technical Specification is Owner -
29 Furnished Equipment (OFE), and will be furnished by WSF. (See RFP Volume V,
30 Owner - Furnished Equipment.)
31
- 32 15.2. At its sole expense, and risk, the Contractor shall transport the OFE from a WSF
33 designated warehouse, as described in the Technical Specification. The Contractor
34 shall schedule the OFE transport with the WSF Representative. The WSF
35 Representative (or designee) shall have the right to be present at the destination / off-
36 loading site for inspection of OFE. Immediately upon off-loading the OFE, the
37 Contractor shall inventory and inspect the OFE and immediately report to WSF, in
38 writing, any shortages or damage. The Contractor shall care for the OFE at the more
39 stringent of either the manufacturer's instructions or as if it were the Contractor's
40 material. Upon acquiring possession or control of the OFE, the Contractor shall be
41 solely and exclusively responsible for all loss or damage to the OFE or the resulting
42 consequences or impacts thereof that are the result of acts, errors, and/or omissions on
43 the part of the Contractor or anyone for whom the Contractor is responsible. Damage
44 or loss caused by defects in the OFE itself are not the responsibility of the Contractor
45 unless the Contractor reasonably should have discovered such defects and failed to
46 take appropriate precautions to prevent such damage or loss. OFE shall be stowed in

1 a lockable, dry warehouse that has a properly controlled environment and
2 temperature. The Contractor shall identify the dates the OFE are required in
3 Contractor's Master Construction Schedule.

4
5 15.3. WSF will provide the services of OFE vendor technical representatives for the OFE,
6 to the extent described in the Technical Specification, to advise and assist the
7 Contractor. Should the Contractor desire additional technical support, the Contractor
8 shall arrange, through WSF, for the vendor services and shall be responsible to WSF
9 for all additional costs incurred by WSF, including OFE vendor charges.

10
11 15.4. If an OFE vendor's field representative must perform work beyond that required by
12 WSF's original purchase specification, or if the WSF-furnished service period is
13 extended because of the Contractor's lack of preparation, schedule slippage or
14 negligence, the Contractor shall be responsible for and WSF will charge it the amount
15 billed by the OFE vendor for the extra time and expenses by deducting such amount
16 from the Progress Payments. The OFE vendor's representation has been purchased by
17 WSF on a normal daytime, weekday work schedule. Should the Contractor require
18 the services of the vendor's representative outside the normal schedule, it shall be
19 solely responsible for any and all premium compensation that may be incurred.

20
21 15.5. The Contractor shall provide all electrical power, water service, lubrication, lighting,
22 and ventilation and any other services required for storage and installation of OFE.
23 The Contractor shall be responsible for proper installation of OFE in accordance with
24 all of the manufacturers' instructions, and for assurance that such OFE is in good
25 working order upon Delivery.

26 27 28 **16. DANGEROUS MATERIALS**

29
30 16.1. None of the following shall be installed on or applied to the Vessel: asbestos
31 containing materials (ACM's); lead containing paints (LCP's); and materials or
32 components containing polychlorinated biphenyls (PCB's). All non-ACM substitutes
33 must meet current criteria for safety and fire protection.

34
35 16.2. Upon request, the Contractor shall provide information and documentation pertaining
36 to the use, removal or disposal of ACM, LCP, PCB's or other toxic or hazardous
37 waste. If, at any time during the Contract Work, the Contractor fails to provide the
38 requested information or documentation, or submits erroneous information or
39 documentation, it shall be cause for WSF to suspend all work until such time as the
40 deficiencies have been rectified at the Contractor's expense.

41
42 16.3. Whether or not any toxic or hazardous materials (including, but not limited to, ACM,
43 LCP and PCB's) are identified in the Contract Documents, Drawings or otherwise, the
44 Contractor shall be solely responsible for properly transporting, handling, and
45 disposing of hazardous materials and for complying with, and enforcing, all
46 Regulations pertaining to the removal of ACM, LCP, PCB's, other toxic or hazardous

1 materials, and other waste material and debris whenever and wherever encountered in
2 the performance of the Contract Work. Such responsibility includes strict compliance
3 with WAC Chapter 173-303 (Dangerous Waste Regulations) and any applicable local
4 Regulations. Any such regulatory compliance work, including that which may arise
5 during performance of Change Order Work, is part of the Contract Work and is
6 covered by the Award Price. The Contractor shall protect and indemnify WSF from
7 any and all damages associated with or arising therefrom. The terms “hazardous
8 materials” or “hazardous substances”, as used herein, means any hazardous, toxic,
9 radioactive, or infectious substance, material or waste as defined, listed or regulated
10 under any federal, state or local law, statute, regulation, code, rule, ordinance, order,
11 judgment, decree, injunction, or common law pertaining in any way to the protection
12 of human health or the environment, including without limitation, the Resource
13 Conservation and Recovery Act, the Comprehensive Environmental Response,
14 Compensation and Liability Act, the Toxic Substances Control Act, the Hazardous
15 Waste Management Act, RCW Ch. 70.105, the Model Toxic Control Act, RCW Ch.
16 70.105D, and any similar or comparable federal, state, or local law. The terms
17 “hazardous materials” or “hazardous substances” also include, without limitation,
18 petroleum oil and any of its fractions.
19
20

21 **17. CONTRACT CHANGES**

22
23 17.1. WSF reserves the right to authorize and/or require changes in the Contract Work
24 within the general scope of the Contract as provided herein. Such changes shall not
25 invalidate the Contract nor release the Surety, and the Contractor agrees to perform
26 the Work as altered. Among others, these changes may include:
27

- 28 1. Deleting any part of the Contract Work
- 29 2. Adding new Contract Work
- 30 3. Otherwise modifying the scope of the Contract Work
- 31 4. Otherwise revising the terms and conditions of the Contract Documents
- 32 5. Altering facilities, equipment, materials, or services, provided by WSF
- 33 6. Ordering the Contractor to speed up or delay the Contract Work.

34
35
36 The Technical Proposal is a part of the Contract and the concepts and requirements
37 contained therein shall not be materially changed unless authorized by WSF by
38 written order or Change Order. Changes in the Detailed Design by the Contractor to
39 meet Contract requirements or correct deficiencies necessary to meet the
40 requirements of the Contract Documents, are the responsibility of the Contractor and
41 are not considered a change in the Contract Work. No adjustment will be allowed to
42 the Contract Price or Contract Time for such changes.
43
44
45
46

1 If WSF determines that a change in the Contract Work directed by WSF increased or
2 decreased the Contractor's costs or time required for performance of the Contract
3 Work, WSF will make an equitable adjustment, excluding the loss of anticipated
4 profits, to the Contract. The equitable adjustment to the Contract Price will be
5 pursuant to Article 17.4 and by agreement with the Contractor. However, if the
6 parties are unable to agree, WSF will determine the amount of the equitable
7 adjustment in accordance with Article 17.4 and adjust the Contract Time in
8 accordance with the "Extension of Time" Article. WSF's decision concerning
9 equitable adjustment shall be final.

10
11 The Contractor shall maintain accurate, concurrent time and materials records for all
12 work performed which it believes constitutes extra work (including non-construction
13 Work), pending issuance of a Change Order or resolution of any dispute in
14 accordance with the "Procedure and Protests by the Contractor" Article or as required
15 for Force Account Work under Article 17.3. The Contractor shall not be entitled to
16 any adjustment in the Contract Price or Contract Time to the extent it fails to maintain
17 such records.

18
19 The Contractor shall proceed with WSF directed changes in the Contract Work upon
20 receiving:

- 21
22 1. A written Change Order approved by WSF, or
- 23
24 2. A written order from WSF's Project Engineer pursuant to Article 17.5
25 before actually receiving the written Change Order.
- 26

27 The Contractor shall obtain written consent of the Surety or Sureties if WSF requests
28 such consent.

29
30 17.2 The Contractor acknowledges and agrees that no increase in the Contract Price or
31 Contract Time is available except in circumstances expressly provided for in the
32 Contract, that price increases shall be available only as provided in this Article, and
33 that the Contractor shall bear full responsibility for the costs of all other changes or
34 revisions to the scope of its work or any other circumstances which may result in
35 added costs or performance time to the Contractor. Matters which are the
36 Contractor's exclusive responsibility include the following:

- 37
38 A. Errors, omissions, inconsistencies or other defects in the Contractor's
39 Technical Proposal or in the Detailed Design documents;
- 40
41 B. Any design changes required by WSF as part of the process of reviewing the
42 Detailed Design for consistency with the requirements of the Contract
43 Documents;
- 44
45 C. Defects or errors in the Contractor's schedule for performance of the Work or
46 changes in the planned sequence of performance of the Contract Work (except

1 to the extent that changes in the planned sequence of performance of the
2 Contract Work arise from causes otherwise entitling the Contractor to an
3 equitable adjustment under the Contract Documents);
4

5 D. Action or inaction of a Subcontractor or other third party providing labor,
6 services, materials or equipment to the Contractor (unless arising from causes
7 otherwise entitling the Contractor to an equitable adjustment under the
8 Contract Documents);
9

10 E. Untimely delivery of equipment or material (excluding OFE) or
11 unavailability, defectiveness, or increases in costs of material, equipment or
12 products specified by the Contract Documents (except to the extent caused by
13 a national strike);
14

15 F. Costs associated with any delay (except as specifically allowed under Articles
16 17.4 and 17.6);
17

18 G. Costs covered by insurance proceeds received by or on behalf of the
19 Contractor;
20

21 H. Costs of Correction of nonconforming Work and oversight and related
22 activities in connection therewith by WSF (including rejected Working
23 Drawing submittals);
24

25 I. Failure by the Contractor to comply with Contract requirements;
26

27 J. Delays in obtaining governmental approvals or other approvals by Regulatory
28 Agencies that are required to be obtained by the Contractor;
29

30 K. All events beyond the control of WSF except for events that WSF has
31 specifically agreed to assume responsibility for under the Contract
32 Documents;
33

34 L. Any situations which, while not within one of the categories delineated above,
35 were or should have been anticipated by the Contractor because such
36 situations are addressed elsewhere in the Contract Documents or arise out of
37 the nature of the Work,
38

39 M. All events or causes for which the Contractor failed to provide a timely
40 written notice or Condition Report or has otherwise waived its right to seek an
41 adjustment in the Contract Price and Contract Time under applicable
42 provisions of the Contract Documents, and
43

44 N. All events or causes for which the Contract Documents bar any adjustment of
45 the Contract Price or Contract Time.

1 The Contractor hereby assumes responsibility for all such matters, and acknowledges
2 and agrees that assumption by the Contractor of responsibility for such costs and
3 delays, and the consequences and costs resulting there from, is reasonable under the
4 circumstances of the Contract and that contingencies included in the Contract Price,
5 in the Contractor's sole judgment, constitute sufficient consideration for its
6 acceptance and assumption of said risks and responsibilities.
7

8 17.3 WSF may, at its discretion, direct the Contractor to perform Change Order Work on a
9 time and materials basis ("Force Account Work") whenever WSF determines that it is
10 in WSF's best interest. Force Account Work may only be authorized by a written
11 order issued by WSF's Project Engineer, which specifically describes the Change
12 Order Work and states that it is to be performed as Force Account Work pursuant to
13 this Article 17.3. Except as otherwise provided in this Article, the Contractor shall be
14 entitled to an adjustment in the Contract Price on account of Force Account Work for
15 the costs allowed under Article 17.6 that were actually, reasonably, and necessarily
16 incurred by Contractor in performing the Force Account Work, provided the
17 Contractor maintains contemporaneous and accurate records of such costs. The
18 Contractor shall not be entitled to any adjustment in the Contract Price for costs
19 incurred in performing Force Account Work that were unreasonable or unnecessary
20 under the circumstances. Force Account Work may, at any time and by agreement of
21 the parties, be converted to agreed unit prices or lump sums applicable to the
22 remaining Contract Work.
23

24 17.3.1 Daily Reports. The Contractor shall furnish daily, on forms approved by
25 WSF, reports of Force Account Work. The reports shall itemize all costs for
26 labor, materials, and equipment rental or otherwise allowed under Article 17.6
27 and give a total of costs to date for the Force Account Work. For workers, the
28 reports shall include hours worked, rates of pay, names and classifications.
29 All such records and reports shall be made immediately available to WSF
30 upon its request. The cost of furnishing such reports shall be included in the
31 Contractor's fee percentages as provided in Article 17.6.8. Subcontractors (of
32 any tier) performing Force Account Work shall similarly maintain such
33 records and reports.
34

35 17.3.2. Reports as Basis for Payment. The Contractor or its authorized representative
36 shall sign all Force Account Work reports. WSF will compare its records with
37 the Contractor's reports, make the necessary adjustments and compile the
38 costs of Force Account Work. When such reports are agreed upon and signed
39 by both parties, they will become the basis of payment.

1 17.4 The equitable adjustment in the Contract Price for Change Order Work shall be
2 limited to the costs allowed under Article 17.6 subject to the other limitations of this
3 Article 17.4 and shall be determined as follows:
4

5 If the parties are able to agree, the price will be determined by using:
6

- 7 1. Unit prices, if provided for under the Contract, or otherwise agreed to
8 by the parties, and/or
9
- 10 2. Other agreed upon costs.
11

12 In such event, the agreed upon price shall be reflected in a Change Order
13 executed by both parties and shall constitute a full and final accord and
14 satisfaction of all claims and issues of any form relating to the Change Order.
15

16 If the parties cannot agree, the price will be determined by WSF using:
17

- 18 1. Unit Prices, if provided for under the Contract, and/or
19
- 20 2. Costs allowed under Article 17.6 subject to any limitations noted in
21 this Article 17.4.
22

23 In such event, WSF may unilaterally issue a Change Order based upon WSF's
24 determination of the allowed costs for the Change Order Work under this
25 Article 17. The Contractor shall perform the Change Order Work and shall
26 receive payment as set forth in the Change Order pursuant to the "Progress
27 Payments" Article. If the Contractor disagrees with, or disputes, the terms of
28 any such unilaterally issued Change Order it must comply with the procedures
29 and requirements of the "Procedure and Protests by the Contractor" and
30 "Claims" Articles. Failure by the Contractor to do so shall be deemed
31 acceptance of the unilaterally issued Change Order and a complete waiver of
32 any claims relating to such unilaterally issued Change Order.
33

34 The Contractor shall provide to WSF, within fourteen (14) days of any request by
35 WSF, or as otherwise required under Article 17.5, a cost estimate for any WSF
36 proposed or directed Change Order Work, which shall include a complete itemization
37 and breakdown of costs/fees allowed under Article 17.6. If the Contractor proposes,
38 or intends, that Subcontractors perform Change Order Work, the Contractor's
39 estimate shall include, unless otherwise agreed by WSF, the applicable
40 Subcontractors' quotes, on the Subcontractors' letterhead, which shall also provide an
41 itemized breakdown of the costs/fees allowed under Article 17.6. The Contractor's
42 estimate shall identify all conditions in respect to prices, quotes, or other aspects of
43 the estimate, such as pricing contingent on firm orders being made by a date certain
44 or the occurrence or non-occurrence of an event. WSF may communicate directly

1 with any Subcontractors concerning costs proposed or incurred for any Change Order
2 Work or Force Account Work. Failure by Contractor to timely provide an estimate,
3 as required herein, shall constitute a waiver by Contractor of any right or entitlement
4 to adjustment in the Contract Price or Contract Time.

5
6 If the Contractor believes it is also entitled to an adjustment in the Contract Time on
7 account of any WSF proposed, or directed, Change Order Work, the Contractor's
8 proposal shall indicate the specific adjustment to the Contract Time to which the
9 Contractor believes it is entitled and contain the supporting information and
10 documentation required under the "Extension of Time" Article. If the parties are
11 unable to agree on the adjustment in the Contract Time, such adjustment, if any, shall
12 be determined by WSF pursuant to the "Extension of Time" Article.

13
14 The following limitations shall apply in determining any equitable adjustment:

- 15
16 1. The Contractor's overhead and profit is included in the "Fee" allowed
17 under Article 17.6.8. No other markup for overhead or profit shall be
18 allowed.
- 19
20 2. All Contractor-owned equipment costs are included in the Contractor's
21 "Fee" allowed under Article 17.6.8.
- 22
23 3. To the extent any critical path delay was concurrently caused by the
24 Contractor and events or causes for which WSF is responsible under
25 the Contract Documents, the Contractor shall be entitled to time
26 extension only to the extent of such concurrent delay, provided
27 Contractor meets the requirements of the "Extension of Time" Article.
28 The Contractor shall not under any circumstances be entitled to an
29 adjustment in the Contract Price on account of any non-critical path
30 delay or concurrent critical path delay.
- 31
32 4. The Contractor shall not be entitled to anticipated profits on deleted,
33 terminated, or uncompleted Contract Work.
- 34
35 5. The Contractor shall not be entitled to consequential damages of any
36 kind.

37
38 17.5. When WSF's Project Engineer believes that work that qualifies as Change Order
39 Work should proceed immediately, WSF can issue a written order to the Contractor to
40 immediately perform that Work. Such order shall include the phrase, "Proceed with
41 the Work." No order, instruction, or directive will be treated as an order to perform
42 Change Order Work unless it contains the phrase "Proceed with the Work" and is
43 signed by WSF's Project Engineer. For all but WSF directed Force Account Work,
44 the Contractor shall submit to the WSF Project Engineer a cost estimate as noted in
45 Article 17.4 for said Change Order Work within fourteen (14) days following receipt
46 of WSF's written order. In the event that no agreement on price is reached, the

Contractor shall continue performing the work described in the written order. In such case, WSF may proceed to unilaterally issue a Change Order or direct the work to be performed as Force Account Work.

17.6 Unless otherwise specifically agreed by WSF, the amount of any adjustment to the Contract Price on account of any Change Order Work, or of any other increase or decrease in the Contract Price as provided for in the Contract Documents, including any claim under the "Claims" Article, shall be limited to the following costs and fees:

17.6.1. Direct Labor Costs. The Contractor shall be allowed the direct labor costs, determined by the number of additional craft hours and hourly costs, reasonably necessary to perform the Change Order Work. Such direct labor costs shall be based upon, and limited to, the following:

- 1 Basic wages and fringe benefits: The hourly wage (without markup and fringe benefits) paid by the Contractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the change in the Work on the site. The premium portion of the overtime wages is not included, unless pre-approved in writing by WSF. Costs paid or incurred by the Contractor for vacations, per diem, travel, bonuses, stock options, or discretionary payments to the employees shall not be allowed.
- 2 Workers' insurance: Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
- 3 Federal insurance: Direct contribution required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

Costs incurred for supervision, above the foreman level, or first level of supervision, shall not be considered a Direct Labor Cost. All such supervision costs shall be deemed included in the allowed "Fee" under Article 17.6.8.

17.6.2. Direct Material Costs. The Contractor shall be allowed the actual, invoice cost for Contractor-supplied materials reasonably used in performing any Change Order Work. For the purpose of this provision, "Materials" shall include those items incorporated into the Contract Work, supplies used during the work and items consumed. This cost shall include freight and handling

1 charges and applicable taxes. Before Change Order Work is started, WSF
2 may require the Contractor to obtain multiple quotations for the materials to
3 be utilized and select the vendor with prices and terms most advantageous to
4 WSF.

5
6 To support any material costs, the Contractor shall provide valid copies of
7 vendor invoices. If invoices are not available for materials from the
8 Contractor's stocks, the Contractor shall certify actual costs (at a reasonable
9 level) by affidavit. If, in the case of non-invoiced materials supported by the
10 Contractor's affidavit, the price appears to be unreasonable, WSF will
11 determine the cost for all or part of those materials, utilizing the best data
12 available.

13
14 WSF reserves the right to provide materials for any Change Order Work. In
15 such event, the Contractor will receive no payment for any costs, overhead, or
16 profit arising from the value of the WSF provided materials themselves.
17 Reasonable and necessary additional costs to handle and place WSF furnished
18 material shall be compensated as a direct labor cost under Article 17.6.1.

19
20 17.6.3. Vessel Berthing or Drydock Costs. In the event, the Contractor is entitled to
21 an adjustment in Contract Time pursuant to the "Extension of Time" Article
22 and compensation for such time extension or delay is otherwise allowed under
23 the Contract Documents, the Contractor shall be allowed its actual vessel
24 berthing or drydock costs, including the cost of temporary vessel services,
25 calculated on a daily basis, multiplied by the allowed number of days of
26 adjustment in Contract Time. In the event the parties are unable to agree on
27 such costs they shall be determined by WSF based upon an audit. The
28 Contractor acknowledges and agrees that the costs allowed under this sub-
29 Article, together with its Fee allowed under 17.6.8, shall fully and completely
30 compensate the Contractor for any and all costs, of any form or nature,
31 relating to, or arising in any manner out of, the time extension or delay.

32
33 17.6.4. Subcontractor Costs. The Contractor shall be allowed the cost of payments
34 actually and necessarily made to a Subcontractor for costs incurred in
35 performing Change Order Work to the extent allowed in this Article 17.6.
36 Allowable Subcontractors' costs for Change Order Work shall be determined
37 in the same manner as set forth in this Article 17.6 for the Contractor, unless
38 stated otherwise or as otherwise agreed by WSF. The Contractor shall
39 provide WSF written quotations from the Subcontractor, on its letterhead,
40 which shall include an itemized breakdown of the Subcontractor's costs/fees,
41 meeting the requirements of this Article 17.6.

42
43 17.6.5 Costs of Services. The Contractor shall be allowed the actual and necessary
44 costs incurred for services provided by third parties, other than
45 Subcontractors, in performing the Change Order Work. Such services shall be
46 ones that are typically billed through invoice in standard industry practice, and

1 include design and engineering services. The allowable costs of such services
2 shall be limited to commercially competitive and reasonable rates, customarily
3 and actually paid by the Contractor. Before the Change Order Work is started,
4 WSF may require the Contractor to obtain multiple quotations for the service
5 to be utilized and select the provider with prices and terms most advantageous
6 to WSF. In the event that prior quotations are not obtained and the service
7 invoice is submitted, then after-the-fact quotations may be obtained by WSF
8 from the open market in the vicinity and the lowest such quotation may be
9 used in place of the submitted invoice.

10
11 17.6.6 Costs for Small Tools and Consumables. The allowable costs for small tools
12 and consumables incurred by the Contractor in performing the Change Order
13 Work shall be calculated as Five Percent (5) % of the allowed direct labor cost
14 under Article 17.6.1.

15
16 17.6.7 Costs for Insurance and Bond Premium. WSF will reimburse the Contractor
17 for the actual cost of changes in insurance or bond premium directly incurred
18 as a result of performing the Change Order Work as follows:

- 19
20 1. Contractor liability insurance: The actual cost (expressed as a
21 percentage submitted with the certificate of insurance provided under
22 the "Insurance" Article and subject to audit) of any changes in the
23 Contractor's liability insurance arising directly from the Change Order
24 Work; and
25
26 2. Bond: The actual cost of the change in the Contractor's premium for
27 the Contract Security bond arising directly from the Change Order
28 Work.

29
30 Upon request, the Contractor shall provide WSF with supporting
31 documentation from its insurer or surety of any associated cost incurred.

32
33 17.6.8 Fee. The Contractor shall be allowed a Fee as set forth herein as
34 compensation in full for: (i) all supervision costs (including project manager,
35 project engineer, other engineer, superintendents, estimators, and other
36 Contractor staff or supervision above the foremen level); (ii) overhead costs of
37 any form or nature (including project overhead, shipyard overhead,
38 manufacturing overhead, home office overhead, general or administrative
39 costs, and extended or unabsorbed overhead); (iii) all costs of owned
40 equipment; (iv) costs of impacts or disruption of any form (including
41 cumulative disruption, trade stacking, concurrent operations, rescheduling of
42 work, dilution of supervision, loss of learning curve, loss of labor efficiency,
43 constructive acceleration); (v) profit; (vi) taxes (including B& O tax); and/or
44 (vii) other costs of any form or nature not specifically allowed under this
45 Article 17.6; arising or resulting from, or otherwise relating in any manner to,

the Contractor's performance of Change Order Work. The Fee shall be limited in all cases to the following schedule:

1. Thirty percent (30%) of Direct Labor Costs allowed under Article 17.6.1 for labor provided by the Contractor's own forces.
2. Fifteen percent (15%) of Direct Material Costs allowed under Article 17.6.2 for materials supplied by the Contractor or a material supplier under contract with the Contractor.
3. Ten percent (10%) of Vessel Berthing and Drydock Costs directly incurred by Contractor and allowed under Article 17.6.3.
4. Twelve percent (12%) of amounts paid for work performed by a Subcontractor and allowed under Article 17.6.4, excluding the Subcontractor's Fee.
5. Fifteen percent (15%) of amount paid for the Costs of Other Services and allowed under Article 17.6.5.
6. Each Subcontractor shall be allowed a Fee as follows:
 - (a) Twelve percent (12%) of Direct Labor Costs allowed under Article 17.6.1 for labor provided by the Subcontractor's own forces.
 - (b) Seven and one half percent (7.5%) of Direct Material Costs allowed under Article 17.6.2 for materials supplied by the Subcontractor or a material supplier under contract with the Subcontractor.
 - (c) Six percent (6%) of amounts paid for work performed by a lower tier Subcontractor and allowed under Article 17.6.4, excluding the lower tier Subcontractor's Fee.
 - (d) Seven and one half percent (7.5%) of amounts paid for the Costs of Other Services and allowed under Article 17.6.5.

If a change in the Contract Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. Where the net difference is negative, no Fee shall be added to the negative figure as a further deduction. The Contractor acknowledges and agrees that the Fees provided in this Article 17.6.8 are sufficient and adequate to fully compensate the Contractor.

1 17.6.9 Costs Not Allowed. The Contractor shall only be entitled to an adjustment in
2 the Contract Price on account of Change Order Work for the costs/fees
3 specifically allowed under this Article 17.6. No other costs/fees or markups
4 of any kind shall be allowed.
5

6 17.6.10 Negotiated Change Order Unit Price Rate. WSF may request, and the
7 Contractor shall provide, a proposed, composite change order unit price rate
8 including some, or all, of the cost components set forth in this Article 17.6.
9 Where agreed to by the parties, such composite change order rate may be used
10 to establish the price of a Change Order in lieu of an itemized breakdown of
11 the cost components set forth in this Article 17.6. Use by WSF of such an
12 agreed, composite rate in connection with any one or more Change Orders or
13 change in the Contract Work shall not be deemed, in any manner, to constitute
14 approval by WSF for, or require use of, such composite rate in connection
15 with any other change in the Contract Work, Change Order, or claims.
16

17 17.7. WSF may delete portions of the Contract Work by Change Order as provided in
18 Article 17.1 or may terminate the Contract in whole or part as provided in the
19 "Termination for Public Convenience" Article.
20

21 When any item is deleted in whole or in part by Change Order or when the Contract
22 is terminated in whole or in part, under the "Termination for Public Convenience"
23 Article, adjustment of the Contract Price and any payment to the Contractor will be
24 made as follows:
25

- 26 1. Payment for Contract Work performed prior to the effective date of
27 any deletion by Change Order or termination will be based upon an
28 updated Progress Estimate as of the effective date of such deletion or
29 termination pursuant to the "Progress Payment" Article. The amount
30 of credit to be allowed by the Contractor to WSF and the
31 corresponding reduction in the Contract Price on account of a deletion
32 by Change Order or termination shall be the greater of: (i) the unpaid
33 line item value(s) of such deleted or terminated Contract Work as set
34 forth in the Contractor's Progress Estimate or (ii) the actual cost which
35 would have been incurred by the Contractor in performing the deleted
36 or terminated Contract Work. If the parties do not agree on such
37 payment or adjustment, WSF's Project Engineer will determine such
38 amounts pursuant to Articles 17.4 and the "Progress Payment" Article.
39
- 40 2. The Contractor shall not be entitled to payment for deleted or
41 terminated Contract Work not performed by the Contractor, provided
42 however to the extent not previously paid for by the portion of the
43 Contract Price allocated to completed Contract Work, WSF will pay as
44 part of the equitable adjustment those direct costs necessarily and
45 actually incurred by the Contractor in anticipation of performing the
46 Contract Work that has been deleted or terminated.

3. The total payment for any one item in the case of a deletion or partial termination shall not exceed the Contract Price as modified by approved Change Orders, less the estimated cost (including overhead and profit) to perform the deleted or terminated Contract Work, and less any amount paid to the Contractor for the item.
4. The total payment where the Contract is terminated in its entirety shall not exceed the total Contract Price as modified by approved Change Orders, less the estimated cost (including overhead and profit) to perform the terminated Contract Work, and less those amounts paid to the Contractor before the effective date of the termination; and
5. No claim for damages of any kind or for loss of anticipated profits will be allowed because of a deletion or termination of Contract Work.

Contract Time shall be adjusted as the parties agree. If the parties cannot agree, WSF will determine the equitable adjustment for Contract Time in accordance with the "Extension of Time" Article.

Acceptable materials ordered by the Contractor prior to the date the Work was terminated as provided in "Termination For Public Convenience" Article or deleted as provided in Article 17.1 by WSF, will either be purchased from the Contractor by WSF at the actual cost and shall become the property of WSF, or WSF will reimburse the Contractor for the actual costs connected with returning these materials to the suppliers.

- 17.8. Each Change Order shall be separately progressed for direct charge Engineering Labor, direct charge Contractor labor and material, and Subcontractor labor and material costs, and shall be identified as a separate line item in the Progress Estimate. Progress payments for Change Order Work shall be made in the manner provided for in the "Progress Payments" Article.
- 17.9. Extra work and materials furnished without a Change Order or other authorization as provided for in this Contract will be considered unauthorized and will not be paid for by WSF. Upon order of WSF, unauthorized work or materials shall be immediately remedied, removed, replaced or disposed of at the Contractor's expense.
- 17.10. Contract Security for Change Orders shall be in accordance with "Contract Security" Article. All Contract Security shall cover and apply to all Change Order Work.

1 **18 PROCEDURE AND PROTESTS BY THE CONTRACTOR**

2
3 18.1. The Contractor accepts all requirements of a Change Order, including a Change
4 Order unilaterally determined by WSF, by:

- 5
6 1. endorsing it; or
7
8 2. writing a separate acceptance; or
9
10 3. not protesting in the way this Article provides.

11
12 A Change Order accepted by the Contractor or that is not protested as provided in this
13 Article shall be full payment and final settlement of all claims for adjustment of
14 Contract Time or Contract Price and for all costs of any kind, including costs of
15 delays, disruptions and impacts of any nature related to any work either covered or
16 affected by the change. By not protesting as this Article provides, the Contractor also
17 waives any additional entitlement to an adjustment in Contract Price or Time and
18 accepts from WSF any other written order (including directions, instructions,
19 interpretations, and determinations).

20
21 18.2 If the Contractor disagrees with anything required in a Change Order or any written
22 order, direction, instruction, interpretation or determination by the WSF Project
23 Engineer, including responses to Contractor submitted Contract Reports, the
24 Contractor shall:

25
26 A. Immediately give a signed written notice of protest to WSF before doing the
27 work. Said notice shall be delivered to WSF within 7 days of the
28 occurrence of the event giving rise to the protest. For purposes of this
29 Article, "occurrence" means when Contractor knows, or in its diligent
30 prosecution of the Work should have known, of the event giving rise to the
31 protest. Contractor shall not be entitled to any adjustment in the Contract
32 Price or any Contract Time for any occurrence of events or costs that
33 occurred more than 7 days before Contractor's written notice to WSF.

34
35 B. The written notice of protest shall contain the following information:

- 36
37 1. The date of the protested action;
38
39 2. The general nature and circumstances which caused the protest;

40
41 C. The Contractor shall supplement the written notice of protest within thirty
42 (30) days with a written statement providing the following:

- 43
44 1. A full discussion of the circumstances which caused the protest,
45 including, names of persons involved, time, duration and nature of
46 the work involved, and a review of the Contract

1 Documents/Detailed Design documents referenced to support the
2 protest;

3
4 2. The estimated dollar cost broken down by the cost components
5 allowed under the "Contract Changes" Article, including such
6 costs for Subcontractors, if any, of the protested work and how that
7 estimate was determined; and

8
9 3. An analysis of the progress schedule showing the schedule change
10 or disruption if the Contractor is asserting a schedule change or
11 disruption.

12
13 D. The Contractor shall supplement the information required above upon
14 request by the WSF Project Engineer.

15
16 18.2. Throughout any protested work, the Contractor shall keep complete, detailed and
17 contemporaneous records of costs incurred and schedule impact in the performance of
18 the protested work. The Contractor shall permit WSF access to these and any other
19 records needed for evaluating the protest, at any time.

20
21 18.3. WSF will evaluate all protests; provided the procedures in this Article are followed.
22 If the WSF Project Engineer determines that a protest is valid, WSF will make an
23 equitable adjustment in accordance with the "Contract Changes" Article. Extensions
24 of time will be evaluated in accordance with the "Extension of Time" Article. No
25 adjustment will be made for an invalid protest.

26
27 18.4. If WSF determines that the protest is invalid, that determination, with an explanation,
28 shall be provided in writing to the Contractor. If the Contractor does not accept
29 WSF's determination, the Contractor shall comply with the requirements of the
30 "Claims" Article herein.

31
32 18.5. Notwithstanding any protest and appeal, the Contractor shall proceed promptly with
33 the work as directed by the WSF Project Engineer.

34
35 18.6. The failure of the Contractor to initiate, pursue, and evidence its protest in accordance
36 with all of the terms of this Article (including the Contractor's duty to maintain
37 records and disclose all relevant information to the WSF Representative) shall be
38 deemed a waiver of its right to any equitable adjustment in the Contract Time and/or
39 Contract Price.

19. CLAIMS

19.1. When disputes occur during the Contract, the Contractor shall pursue resolution through the WSF Project Engineer. The Contractor shall follow the procedures outlined in the "Procedure and Protests by the Contractor" Article. If the negotiation using the procedures outlined in therein fails to provide satisfactory resolution, the Contractor shall pursue the more formalized method outlined in this Article for submitting a claim.

19.2. If the Contractor claims that it is entitled to an adjustment in the Contract Time and/or Contract Price, and provided that the Contractor has pursued and exhausted all the means provided in the "Procedure and Protests by the Contractor" Article to resolve a dispute, the Contractor may file a claim as provided in this Article. The Contractor shall be deemed to have waived, released, and relinquished any claim for additional compensation or performance time, or adjustment to the Contract Price or Contract Time, if the Contractor fails: (a) to provide WSF timely written notifications or other submissions required by the "Procedure and Protests by the Contractor" Article; (b) to maintain complete records of actual cost and additional time incurred, as required by the "Procedure and Protests by the Contractor" Article, or provide for WSF access to same; (c) to properly and timely submit a claim as required by this Article; or (d) to take such actions or provide such notices as required by other provisions of the Contract Documents as a condition to the Contractor's right to seek any adjustment in Contract Time or Contract Price. The fact that the Contractor has provided a proper notification, provided a properly filed claim, or provided WSF access to records of actual cost, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by WSF, is found to have merit, WSF will make an equitable adjustment either in the amount of costs to be paid or in the time required for the Work, or both. If WSF finds the claim to be without merit, no adjustment will be made.

19.3. All claims filed by the Contractor shall be in writing, submitted to the WSF Project Engineer as soon as possible, and in no event later than the date WSF executes the Final Contract Voucher Certificate (as specified in the "Progress Payments" Article). All claims shall be in sufficient detail to enable the WSF Project Engineer to ascertain the basis and amount of the claim. As a minimum, the following information must accompany each claim submitted:

- A. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim.
- B. The date on which facts arose that gave rise to the claim.
- C. The name of each WSF individual, official, or employee and each Contractor or Subcontractor employee or agent involved in, or knowledgeable about, the claim.

- 1 D. The specific provision of the Contract Documents which support the claim
2 and a statement of the reasons why such provisions support the claim.
3
- 4 E. If the claim relates to a decision of WSF which the Contract leaves to
5 WSF's discretion or as to which the Contract provides that WSF's decision
6 is final, the Contractor shall set out in detail all facts supporting its position
7 relating to the decision of WSF
8
- 9 F. The identification of any documents and the substance of any oral
10 communications that support the claim.
11
- 12 G. Copies of any documents that support the claim.
13
- 14 H. If an adjustment in the Contract Time is sought:
15
16 1. The specific days and dates for which it is sought;
17
18 2. The specific reasons the Contractor believes a time adjustment
19 should be granted;
20
21 3. The specific provisions of the Contract under which it is sought;
22 and
23
24 4. The Contractor's analysis of the impact of the event(s) upon the
25 Contractor's schedule to demonstrate the reason and entitlement for
26 such adjustment.
27
- 28 I. If additional compensation is sought, the exact amount claimed and a
29 breakdown of that amount into the specific cost components allowed under
30 the "Contract Changes" Article. Subcontractor's claims shall be set forth in
31 the same detail.
32
- 33 J. A notarized statement shall be submitted to the WSF Project Engineer
34 containing the following language:
35
36 Under the penalty of law for perjury or falsification, the undersigned,
37
38 _____,
39 (name)
40
41 _____ of
42 (title)
43
44 _____,
45 (company)
46

1 hereby certifies that the claim for extra compensation and time, if any, made
2 herein for Work on this Contract is a true statement of the actual costs
3 incurred and time sought, and is fully documented and supported under the
4 Contract between the parties, and reflects an adjustment to which the
5 Contractor in good faith believes it is entitled under the Contract.
6

7 19.7. It shall be the responsibility of the Contractor to keep full and complete records of the
8 costs and additional time incurred for any alleged claim. The Contractor shall permit
9 WSF to have access at all reasonable times to those records and any other records as
10 may be required by WSF to determine the facts or contentions involved in the claim.
11 The Contractor shall retain those records in accordance with the provisions of the
12 "Audit" Article. All claims filed against WSF shall be subject to audit in accordance
13 with the provisions of the "Audit" Article. Failure of the Contractor, Subcontractors,
14 or lower tier Subcontractors to maintain and retain sufficient records to allow WSF to
15 verify all or a portion of the claim or to permit WSF access to the books and records
16 of the Contractor, Subcontractors, or lower tier Subcontractors shall constitute a
17 waiver of the claim(s) and shall bar any recovery for that claim(s).
18

19 19.8. The Contractor shall pursue administrative resolution of any claim with WSF or the
20 designee of WSF.
21

22 19.9. Provided that the Contractor is in full compliance with all the provisions of this
23 Article and after the formal claim document has been submitted, WSF will respond,
24 in writing, to the Contractor as follows:
25

26 A. Within sixty (60) days from the date the claim is received by WSF; provided
27 however,
28

29 B. If in the opinion of WSF the above time period is unreasonable due to the
30 complexity of the claim under consideration, the Contractor will be notified
31 within thirty (30) days from the date the claim is received by WSF as to the
32 amount of time which will be necessary for WSF to prepare its response.
33

34 19.10. The failure of the Contractor to initiate, pursue and evidence its claim in accordance
35 with all of the terms of this Article (including the Contractor's duty to disclose all
36 relevant information to WSF) shall be deemed a waiver of its right to any adjustment
37 in the Contract Time and/or Contract Price. Full compliance by the Contractor with
38 the provisions of this Article is a contractual **CONDITION PRECEDENT** to the
39 Contractor's right to seek judicial relief.

1 19.11 In the event any claim by the Contractor is found valid, whether by WSF or a court of
2 law, the Contractor's recovery of additional costs attributable to such claim shall be
3 limited to the lesser of: (i) the allowed costs and fees under the "Contract Changes"
4 Article reasonably and necessarily incurred by the Contractor; or (ii) the actual costs
5 attributable to such claim, including overhead costs, reasonably and necessarily
6 incurred by the Contractor, and any involved Subcontractor, as verified and
7 determined by audit, plus a reasonable profit.
8
9

10 **20. AUDIT**

11
12 20.1. The Contractor's wage, payroll, cost, and all administrative and entitlement records
13 on this Contract, as well as any other records and data developed or used for this
14 Contract, shall be immediately open to inspection, review or audit by WSF
15 Representatives for the duration of the Contract and for a period of not less than six
16 (6) years after the date of Final Acceptance of all Contract Work. The Contractor
17 shall retain those records and data for that period. Audits may be conducted by WSF
18 for purposes of validating Contractor Claims as well as for verifying Contractor labor
19 rates, overhead costs, berth vessel costs, temporary services costs, and any other costs
20 pertaining to pricing Contractor costs following award of the Contract. The
21 Contractor shall also guarantee that the wage, payroll, cost, and all administrative and
22 entitlement records, as well as any other records and data developed or used for this
23 Contract, of all Subcontractors and all lower tier Subcontractors shall be retained and
24 immediately open to similar inspection, review or audit by WSF Representatives for
25 the same period of time. The inspection, review or audit may be performed by WSF
26 employees or by auditors and/or consultants under contract with WSF or the State.
27 The Contractor, Subcontractors, or lower tier Subcontractors shall provide adequate
28 facilities, acceptable to the WSF Project Engineer, for the audit during normal
29 business hours. The Contractor, Subcontractors, or lower tier Subcontractors shall
30 cooperate in every way with the auditors. If an audit is to be commenced more than
31 sixty (60) days after the Final Acceptance date of the Contract, the Contractor will be
32 given twenty (20) days notice of the time when the audit is to begin. If any litigation,
33 claim, or audit arising out of, in connection with, or related to this Contract is
34 initiated, all applicable records shall be retained until such litigation, claim, or audit
35 involving the records is completed.
36

37 20.2. As a minimum, the auditors shall have available to them the following documents,
38 including both hard and electronic copies as applicable:
39

40 A. Any and all documents that would tend to support, or refute, the Contractor's
41 entitlement to an adjustment to the Contract Time and/or Contract Price.

- 1 B. All worksheets used to prepare the claim establishing the cost components for
2 items of the claim including but not limited to labor, benefits and insurance,
3 materials, equipment, Subcontractors, all documents which establish the time
4 periods, individuals involved, the hours for the individuals, and the rates for the
5 individuals.
6
- 7 C. All records, documents, calculations, notes, correspondence, or any other written
8 material that were used or created by the Contractor, or any consultants, in
9 preparing the Contractor's original estimates, bid and/or budget on this Contract,
10 including, but not limited to, all component parts of all estimates, bid, and
11 budget for labor, equipment, material, Subcontractors, general and
12 administrative costs, and other overhead accumulations and allocations.
13
- 14 D. Any and all documents which show, indicate or reflect amounts, sums or
15 percentages budgeted or allocated for this Contract and amounts, sums or
16 percentages actually spent or incurred during all phases of the of this Contract,
17 including updates, together with all documents which in any way relate to the
18 preparation of the Contractor's bid for this Contract.
19
- 20 E. All construction schedules and updates or revisions thereto, including
21 computerized data pertaining thereto, relating to this Contract without regard to the
22 author thereof. This includes, but is not limited to, "as-planned," "as-adjusted,"
23 "as-built," CPM, PERT, or any other schedules and all revisions or updates
24 thereto. This also includes all correspondence, narratives, or documentation that
25 relates to the scheduling of this Contract as well as any Master Construction
26 Schedule Activity Dictionary, defining items such as work to be done, trades to
27 accomplish the work, estimated labor hour requirements, predecessors, lead/lag.
28
- 29 F. All preliminary and approved drawings, sketches, blueprints, maps, charts, shop
30 drawings, working drawings, specifications, calculations, takeoffs, and similar
31 documents relating in any way to design, bidding, estimating, engineering,
32 fabricating, supplying materials, construction, or scheduling (including critical
33 path scheduling) for this Contract, or any portion(s) thereof. This request also
34 includes all correspondence, narratives, or documentation that relates to these
35 drawings as well as any design, engineering, and working drawing schedules for
36 this Contract and for total shipyard activities.
37
- 38 G. All correspondence, transmittals, invoices, minutes, notes, memoranda,
39 directives, recordings, diaries, logs, journals, progress reports, supervisor's daily
40 reports, organizational charts or guidelines, calculations or calculation sheets,
41 performance evaluations, documents reflecting quality control measures or quality
42 assurance methods and procedures, and other similar documents with respect to
43 this Contract generated by managers, employees, or agents of the Contractor or
44 obtained by the Contractor from other entities or individuals involved in this
45 Contract including outside consultants, advisors, and/or experts. This request also
46 includes all logs, indices, and/or chronological listings of these documents.

- 1 H. All agreements, correspondence, transmittals, invoices, minutes, notes,
2 memoranda, directives, recordings, diaries, logs, journals, progress reports,
3 supervisor's daily reports, organizational charts or guidelines, calculations or
4 calculation sheets, performance evaluations, documents reflecting quality
5 control measures or quality assurance methods and procedures, and other
6 similar documentation relating to all material suppliers and/or Subcontractors to
7 the Contractor on this Contract.
8
- 9 I. All Contract Reports, Change Orders, or other documents pertaining to Contract
10 Work or delays on this Contract, including accompanying sketches, shop
11 drawings, correspondence, memoranda, notations, and other documents that relate
12 to or disclose communications regarding these items.
13
- 14 J. The Contractor's internal operating procedures governing design, engineering,
15 drawings, and change order preparation and approval; material and equipment
16 ordering, inspections, and approval; labor budgeting; labor productivity
17 developments; physical progress reports; and any other procedures which can
18 provide an understanding of the development and content of the Contractor's
19 requests for Price Adjustments and/or Time Extensions.
20
- 21 K. Any and all letters, memoranda, transmittals, records of communication, or
22 other correspondence or documents reflecting, concerning or pertaining to any
23 statements, reports, notices, claims, or tenders made to any bonding companies,
24 insurance companies, agents, brokers, adjusters, underwriters, etc., regarding
25 claims asserted by the Contractor and any responses thereto by any bonding
26 companies, insurance companies, agents, brokers, adjusters, underwriters,
27 attorneys, etc. (including but not limited to "reservation of rights" letters).
28
- 29 L. Any and all documents which contain financial or accounting data pertaining to
30 this Contract including, but not limited to:
31
- 32 1. All labor records for performance on this Contract.
33
 - 34 2. All Job Cost Reports or their equivalent under the Contractor's internal
35 cost accounting and reporting system (Monthly and annually throughout
36 the life of this Contract up to the most recent one prepared) that include,
37 at least, the following information: labor charges, dates of labor charges,
38 trade/cost centers making labor charges, and specific material usage.
39
 - 40 3. Job Cost Detail Report or its equivalent under the Contractor's internal
41 cost accounting and reporting system (End of the job summary report
42 and any which support the monthly Job Cost Reports).

4. All Payroll Records.
5. The Contractor's applicable Accounting Manual with any insert pages relative to this Contract.
6. Any special reports (such as edit reports, entry listings, etc. which link the payroll/labor reports together and/or to the job cost system).
7. All Labor Productivity Reports or their equivalent under the Contractor's internal cost accounting and reporting system; personnel staffing, turnover, training and re-familiarization records; and any special reports that link the payroll/labor reports together and/or to the job cost system (throughout project duration).
8. Material Invoices, Requisitions, and Cost Distribution Worksheets.
9. Canceled Checks (Payroll and Vendors), Cash Disbursements Journal, General Ledger, Earnings Records, and all other books, documents, records, and papers containing information related to costs incurred by the Contractor in performing on this Contract.
10. All of the tax, financial, and accounting books, documents, statements, reports, records and papers of the Contractor, or prepared or held by outside accountants for the Contractor, for the Contractor's fiscal years ending in 2003 through the Contractor's first complete fiscal year following Final Acceptance of this Contract by WSF. In addition, WSF may require, if it deems appropriate, additional financial statements for three (3) years preceding execution of the Contract and three (3) years following Final Acceptance of the Contract.
11. All records and/or reports showing the allocation of common costs to particular contracts during the fiscal years of performance of this Contract. All overhead calculations and all equipment utilization reports. These records are identified in terms of their purpose or use and not by specific name which may differ by contractor.
12. All equipment records.

21. DISPUTES REVIEW BOARD

21.1 Disputes Review Board

In order to assist in the resolution of disputes arising out of the work of this Project, the Contract provides for the establishment of a Disputes Review Board, hereinafter called the "Board." The Board is created as part of the disputes resolution process to be utilized when normal WSF-Contractor dispute resolution is unsuccessful. Unless noted otherwise herein, only disputes remaining between the parties after full compliance with the "Procedure and Protest by Contractor" and "Claims" Articles may be referred to the Board.

The Board will consider disputes referred to it and furnish recommendations to WSF and the Contractor to assist in the resolution of the differences between them. The purpose of the Board's response to such issues is to provide nonbinding findings and recommendations designed to provide the disputing parties an independent view of the merits of the dispute.

The Board members will be especially knowledgeable in the type of marine construction involved in the Project. At least one member of the Board shall have expertise in the interpretation of contracts and applicable law. The Board members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract.

The Board shall consist of one member selected by WSF and one member selected by the Contractor, with these two members to select the third member. The first two members shall be mutually acceptable to both WSF and the Contractor. If one or both of the two members selected are not acceptable to WSF or the Contractor, another selection shall be made.

WSF and the Contractor shall each select their member and negotiate an agreement, separate and apart from this Contract, with their respective Board member within the first 60 calendar days after Notice to Proceed. The agreements with these two Board members shall contain language imposing the "Scope of Work" and "Suggested Administrative Procedures" attached as an Exhibit to the Contract. These negotiated agreements shall also include clauses that require the respective selected members to immediately pursue selection of a third member. The goal is to obtain a third Board member who will complement the first two by furnishing a needed expertise, which will facilitate the Board's operations. The selected third person will be accepted to the Board after he or she executes a standby agreement (Third Party Member Disputes Review Board Consultant Agreement). Information about the acceptable format for this agreement and all accompanying exhibits as well as the processing and approval procedure is available from WSF. The fee for the third member shall be negotiated with the first two members and shall be included in a task order, issued by WSF after the third member standby agreement is fully executed.

In the event of an impasse in selection of the third member, either WSF or the Contractor or both may appeal to the Thurston County Superior Court for selection of a third member by the court from a list or lists submitted to the court by WSF and/or

1 the Contractor. An impasse shall be considered to have been reached if the two
2 members appointed by WSF and the Contractor to the Board have been unable to
3 appoint the third member in a period of 60 calendar days after the approval of the last
4 of such two members.

5 In case a member of the Board needs to be replaced, the replacement member will be
6 appointed in the same manner as the replaced member was appointed. The
7 appointment of a replacement Board member will begin promptly upon determination
8 of the need for replacement and shall be completed within 30 calendar days.

9 Service of a Board member may be terminated at any time with not less than 30
10 calendar days notice as follows:

- 11 1. WSF may terminate service of WSF's appointed member.
- 12 2. The Contractor may terminate service of the Contractor's appointed
13 member.
- 14 3. The third member's services may be terminated by agreement of the
15 other two members.
- 16 4. By resignation of the member.

17 Termination of a member will be followed by appointment of a substitute as specified
18 above.

19 No member shall have a financial interest in the Contract, except for payments for
20 services on the Board. No member shall have been employed by either party or an
21 affiliate of either party within a period of two years prior to award of this Contract or
22 during the term of this Contract; except that, service as a member of other Disputes
23 Review Boards on other contracts will not preclude a member from serving on the
24 Board for this Contract.

25 Compensation for the Board members, and the expenses of operation of the Board,
26 shall be shared by WSF and the Contractor in accordance with the following:

- 27 1. WSF will compensate directly the wages and travel expense for its
28 selected member.
- 29 2. The Contractor shall compensate directly the wages and travel expense
30 for its selected member.
- 31 3. WSF and the Contractor shall share equally in the third member's
32 wages and travel expense, and all of the operating expenses of the
33 Board. These equally shared expenses shall be billed to and paid by
34 WSF. The Contractor's share will be deducted from monies due or
35 coming due the Contractor.
- 36 4. Contractor will provide administrative services, such as conference
37 facilities and secretarial services, to the Board and WSF will bear the
38 costs for this service.

1 21.2 Disputes Review Board Procedures

2 The Board, WSF, and the Contractor shall develop by agreement the Board's rules of
3 operation and procedures to be followed for the Project. The agreement shall include
4 the frequency of the Board's visits to the Project and its interactions with WSF and
5 the Contractor to keep abreast of the construction development and potential disputes.

6 In developing the Agreement, the parties shall take into consideration their respective
7 duties and responsibilities set forth in the "Scope of Work" section of their
8 agreements, the form of which is included in Exhibit 7 to this Contract.

9 The parties may also consider the "Suggested DRB Administrative Procedures" for
10 the Board's operation included in their agreements, the form of which is included in
11 7. These Procedures express, in general terms, the policy for the creation and
12 operation of the Board.

13 Disputes, as used in this Article, will refer only to claims properly submitted in
14 accordance with this Article. If the Contractor disagrees with WSF's final
15 determination of a claim pursuant to the "Claims" Article and either the Contractor or
16 WSF has elected to refer the matter to the Board, then the Board shall consider the
17 issue and provide recommendations concerning:

- 18 1. The interpretation of the Contract
- 19 2. Entitlement to additional compensation or time for performance
- 20 3. The amount of additional compensation or time for performance
21 following a recommendation of entitlement by the Board provided
22 that; (1) the parties were not able to reach a resolution as to the amount
23 of compensation or time; (2) the WSF Engineer has made a unilateral
24 determination of the amount of compensation or time.
- 25 4. Other subjects mutually agreed by WSF and the Contractor to be a
26 Board issue.

27 21.3 Procedure for Consideration of Disputes

- 28 1. Once a determination has been made to submit a dispute to the Board,
29 the Board members will be contacted and advised of the existence of
30 the dispute. A hearing will be scheduled to be conducted at the next
31 regular project visit or at such other time, as agreed to by the parties.
- 32 2. The Contractor and WSF shall each be afforded an opportunity to be
33 heard by the Board and to offer evidence. Either party furnishing any
34 written evidence or documentation to the Board must furnish copies of
35 such information to the other party a minimum of 15 calendar days
36 prior to the date the Board sets to convene the hearing for the dispute.
37 Either party shall produce such additional evidence as the Board may
38 deem necessary to an understanding and determination of the dispute
39 and furnish copies to the other party.

1 3. After the hearing is concluded, the Board shall meet in private and
2 reach a conclusion supported by two or more members. Its findings
3 and recommendations, together with its reasons shall then be
4 submitted as a written report to both parties. The recommendations
5 shall be based on the pertinent Contract provisions and facts and
6 circumstances involved in the dispute. The Contract shall be
7 interpreted and construed in accordance with the laws of the State of
8 Washington. The Board shall make every effort to reach a unanimous
9 decision. If this proves impossible, the dissenting member may
10 prepare a minority report.

11 4. Within 30 calendar days of receiving the Board recommendations,
12 both WSF and the Contractor shall respond to the other in writing
13 signifying that the dispute is either resolved or remains unresolved.
14 Although both parties should place weight upon the Board
15 recommendations, the recommendations are not binding.

16 In the event the Board's recommendations do not lead to resolution of
17 the dispute, all Board records and written recommendations, including
18 any minority reports, will be admissible as evidence in any subsequent
19 litigation.

20 Submittal of a dispute to the Board will be a condition precedent to the
21 filing or litigation in a court of law.

22 All disputes, claims, counterclaims and other matters in question
23 between WSF and the Contractor that are not resolved will be decided
24 in the Superior Court of Thurston County, Washington, which shall
25 have exclusive jurisdiction and venue over all matters in question
26 between WSF and the Contractor.

27 The Contract shall be interpreted and construed in accordance with the
28 laws of the State of Washington.

29
30 21.4 Advisory Opinions: When mutually agreed by WSF and the Contractor, the Board
31 shall provide an advisory opinion on any issue at any time. If the dispute is not
32 resolved after issuance of the advisory opinion, the parties shall pursue a formal
33 Board hearing as provided in this Article. Any oral presentations and resulting
34 advisory opinions shall be disregarded upon failure to resolve the dispute at issue.
35 Advisory opinions shall not be admissible into evidence in any subsequent litigation.

22. CLAIMS RESOLUTION

22.1 Prior to seeking claim resolution through nonbinding alternative dispute resolution processes, or litigation, pursuant to this Article, the Contractor shall proceed under the administrative procedures in the "Procedure and Protests by the Contractor," "Claims," and "Disputes Review Board" Articles and any other provisions provided in the Contract for resolution of disputes. The provisions of these Articles must be complied with in full, as a **CONDITION PRECEDENT**, to the Contractor's right to seek claim resolution through any nonbinding alternative dispute resolution process or litigation, as provided in this Article.

22.2 Nonbinding ADR processes are encouraged and available upon mutual agreement of the Contractor and WSF for all claims submitted in accordance with the "Claims" Article provided that:

1. All the administrative remedies provided for in the Contract have been exhausted;
2. WSF has been given the time and opportunity to respond to the Contractor as provided in the "Claims" Article; and
3. WSF has determined that it has sufficient information concerning the Contractor's claims to participate in a nonbinding ADR process.

WSF and the Contractor mutually agree that the cost of the nonbinding ADR process shall be shared equally by both parties with each party bearing its own preparation costs.

The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Washington at a location mutually acceptable to the parties.

The Contractor agrees that the participation in a nonbinding ADR process does not in any way waive or toll the requirement that litigation proceedings must commence within 180 calendar days of Final Acceptance, the same as any other claim or causes of action as provided in the "Claims" Article.

22.3 The Contractor and WSF mutually agree that those claims submitted in accordance with the "Claims" Article and not resolved by nonbinding ADR processes, shall be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.

23 TESTS AND TRIALS

- 23.1. When the Contract Work is sufficiently complete and all associated installation tests have been satisfactorily completed, and the Ready for Trials Date is set, the Contractor shall conduct dock trials in accordance with the Contract Documents.
- 23.2. After successful dock trials and when the Vessel is ready in all respects for sea, except for minor items that have no effect on the ability of the Vessel to be safely and legally taken to sea, and WSF approval is obtained, the Contractor shall conduct sea trials in accordance with the Contract Documents.

24. DELIVERY

- 24.1. TIME IS OF THE ESSENCE IN THIS CONTRACT. The Contractor shall provide the attention and labor force necessary to facilitate progress and completion of the Contract Work so that Vessel Delivery to WSF shall occur at Eagle Harbor, Bainbridge Island, Washington between 8:00 a.m. and 2:00 p.m. on the Delivery Date as noted in Exhibit 5 hereby incorporated by reference.
- 24.2. The Contract Work shall be scheduled such that the Vessel will have the maximum possible USCG re-inspection interval when it is Delivered. Contract Work such as life saving equipment certification, fire fighting/monitoring/alarm system certification, fire hose testing, life jacket inspection and sea valve inspection shall be accomplished as near to Delivery as possible, but within sixty (60) days prior to Delivery in order to provide WSF with the maximum time before required USCG re-inspections.
- 24.3. When the Contract Work has been completed by the Contractor, and the Vessel has been made ready for service and has satisfactorily completed all tests and in accordance with the Contract Documents, it is to be Delivered, as per Article 24.1 above, with all machinery operating and in first class running order; with all painted surfaces clean and touched-up; stores, inventory and spares provided under this Contract properly stored; all tanks, bilges, ducts, accommodations for passengers and crew and other spaces clean and cleared of all dunnage, dirt and debris.

Upon Delivery, the Vessel shall be clean throughout as ready for passenger service; and all Contractor tools, equipment and excess material shall be removed from the Vessel. Bilges throughout the Vessel shall be clean, dry, and oil free. Potable water tanks shall be filled to ninety-five percent (95%) of capacity with potable water. Fuel oil and lubricants shall be provided as set forth in the Technical Specification. The Vessel at Delivery shall be in a condition so that it can immediately enter WSF scheduled ferry service, and the Contractor hereby warrants that it has reviewed the Vessel's intended service and is fully cognizant of the details of such service.

1 24.4. To ensure that the Vessel is in proper condition for Delivery, WSF, the Contractor
2 and appropriate Authoritative Agencies will complete a joint acceptance survey of the
3 Vessel prior to the scheduled Delivery. The survey shall include a review of the
4 status of acceptance survey deficiencies and items developed thereto. It must be
5 recognized that under the Contract Documents, the Contractor is required to Deliver a
6 Vessel free of all known defects and deficiencies. The Contractor must agree to the
7 earliest practical accomplishment of any remaining acceptance deficiencies without
8 interference with WSF's scheduled use of the Vessel.

9
10 24.5. WSF and the Contractor will acknowledge Delivery by executing a letter of Delivery.
11 This letter shall be drafted by the WSF Representative and co-signed by an authorized
12 Contractor's Representative indicating concurrence with its contents. The Delivery
13 letter shall contain, but is not limited to the following information:

14
15 A. The date, time and place of Delivery;

16
17 B. The general condition of the Vessel at Delivery;

18
19 C. If WSF is willing to accept Delivery prior to Substantial Completion:

20
21 1. a description of any major discrepancies and the deadline for their
22 correction;

23
24 2. as an enclosure, a listing of any minor discrepancies with a
25 schedule for their correction; and

26
27 3. a description of any alleged discrepancy which is in dispute.
28

29 24.6. The existence of any major uncorrected Contractor deficiency item affecting the safe
30 navigation or the immediate use of the Vessel for its intended service will be
31 sufficient cause to withhold Substantial Completion and stop Delivery of a Vessel.
32 The correction of the items or items concerned and the resulting delay therefrom shall
33 be the responsibility of the Contractor. The existence of a large number of
34 uncorrected minor deficiencies may likewise be a cause for withholding Substantial
35 Completion and stop Delivery until their number has been reduced to an acceptable
36 level. All major tests shall be completed prior to sea trials and all tests shall be
37 completed prior to Substantial Completion of a Vessel.
38

39 24.7. If the a Vessel has not reached Substantial Completion by the Delivery Date, then at
40 such time or any time thereafter, WSF, in addition to any other rights it may have
41 under this Contract, shall have the option, but not the duty, to select either of the
42 following options:

43
44 24.7.1. Take physical possession of the Vessel, and withhold payment for all
45 unfinished Contract Work (which may include work commonly known as
46 punch list work). The Contractor shall complete such Contract Work with no

1 adjustment in the Contract Price while the Vessel is either at WSF's Eagle
2 Harbor Maintenance Facility or in passenger service. At its sole discretion,
3 WSF may waive the daily liquidated damages (per the "Failure To Complete
4 On Time" Article) during the completion of such unfinished Contract Work
5 until the scheduled in-service date for the Vessel. WSF shall make one (1)
6 aggregate progress payment to the Contractor upon completion of all
7 unfinished Contract Work.
8

9 Under this option: (i) the Contractor will remain fully responsible for
10 completion of all unfinished Contract Work; (ii) contractual Delivery shall
11 occur upon completion of all such Contract Work; and (iii) the Contractor
12 shall not be entitled to an extension in the Contract Time and/or an increase in
13 the Contract Price related to completion of such Contract Work.
14

15 24.7.2. Treat the unfinished Contract Work as Warranty Deficiencies subject to
16 completion and/or repair under the "Warranty Deficiencies and Remedies"
17 Article, or on terms otherwise acceptable to WSF. The Delivery of the Vessel
18 under the terms of this paragraph shall constitute Delivery subject to said
19 Warranty Deficiencies. Any Warranty Deficiencies that can be identified at
20 such time will be included in the letter delivered at Delivery; Provided that
21 failure to identify any Warranty Deficiency shall not prejudice WSF rights
22 with respect thereto. Delivery under the terms of this paragraph may not
23 occur before the Substantial Completion Date.
24

25 24.8. In addition to its rights under Article 24.7, WSF may take possession and use of the
26 Vessel under such terms as it instructs prior to Substantial Completion. Such
27 possession and use shall not be deemed Delivery. The Contractor will remain
28 responsible for completion of the Contract Work (which may be work commonly
29 known as punch list work) within the Contract Time.
30

31 24.9. In no event shall Delivery be delayed or withheld by Contractor because of disputes
32 between the Contractor and WSF.

25. FAILURE TO COMPLETE ON TIME

- 25.1. Each Vessel is an operating unit of the complete WSF system. Delays inconvenience the traveling public and interfere with and delay commerce. In view of this fact, it is essential that the Contract Work be completed at the earliest possible time, and failure to complete the Contract Work on the Vessel within the Contract Time will result in loss of passenger money and other operating revenue, and incurring of operating and other expenses to WSF. Delays also cost taxpayers undue sums of money, adding time needed for administration, engineering, inspection and supervision.
- 25.2. TIME IS OF THE ESSENCE IN THIS CONTRACT. In view of the foregoing, and because the parties find it impractical to calculate the actual cost of performance delays, it is mutually agreed between WSF and the Contractor that liquidated damages, in lieu of actual damages, in the amount of **Eight Thousand Five Hundred and No/100 Dollars (\$8,500.00) total per day** per Vessel will be assessed against the Contractor for each and every day that Delivery extends past the Delivery Date for each Vessel.
- 25.3. The Contractor acknowledges that the liquidated damages agreed to herein are solely and exclusively for damages suffered by WSF in connection with loss of passenger money, other operating revenue loss and additional occurrence of operating and other expenses incurred by WSF due to delay. The Contractor shall also be liable for any and all other or additional damages incurred by WSF including, but not limited to, those arising from an Event of Default, from Warranty Deficiencies and extra costs incurred by WSF as a result of poor workmanship by the Contractor which shall be in addition to the liquidated damages referred to above.
- 25.4 Actual damages will be assessed for failure to achieve Contract Completion within the time provided in the Contract Documents. Such damages are based on direct engineering, administrative, and other related costs attributable to the Project from the date Contract Completion should have been achieved to the date Contract Completion is actually achieved.
- 25.5. The damages in this Article are in addition to any other damages contained in any other Articles of this Contract.

26. EXTENSION OF TIME

26.1. The Contractor shall submit any requests for extensions of Contract Time for any or all Vessels to WSF in writing no later than fourteen (14) calendar days after the event causing the delay occurs. The request shall be limited to demonstrable delays in the critical path attributable to the change or event giving rise to the request. To be considered by WSF, the request shall be in sufficient detail (as determined by WSF) to enable WSF to ascertain the basis and amount of the time requested. The Contractor shall be responsible for preparing a Master Construction Schedule update meeting the requirements of the Technical Specification and demonstrating to WSF's satisfaction that the event or circumstances: (1) had a specific impact on the critical path for the Delivery of the affected Vessel(s), and except in cases of concurrent delay, was the sole cause of such impact, (2) the specific duration of the critical path delay, and (3) could not have been avoided by resequencing of the Contract Work or other reasonable alternatives. If a request for time extension, combined with previous extension requests, equals 25 percent or more of the Contract Time for Delivery of all Vessels at time of bid, the Contractor shall provide with the request a written consent of the Surety or Sureties if WSF requests such consent. In evaluating any request, WSF will consider how well the Contractor used the Contract Time to the point of the delay and the effect the delay has on any completion times included in the Contract Documents.

26.2 Extensions of Contract Time will be allowed only for that period equal to the time WSF determines the critical path for the affected Vessel(s) was delayed because of:

1. An act or omission by WSF, or others for whom WSF is contractually or legally responsible, which constitutes a material breach of WSF's obligations under the Contract Documents;
2. Fire or other casualty for which the Contractor is not responsible;
3. Unexpected industry wide labor disputes or strikes;
4. Any other conditions for which the Contract Documents permit time extensions such as:
 - (a) If a change to the Contract Work directed by WSF increases the time necessary to achieve Delivery;
 - (b) If the performance of the Contract Work is suspended, delayed, or interrupted for an unreasonable period of time that proves to be the responsibility of WSF; or
 - (c) If a dispute or claim also involves a delay in completing the Contract Work and the dispute or claim proves to be valid.

- 1 5. Exceptional causes not specifically identified in items 1 through 4, or
2 determined by WSF in its sole discretion, provided the Contractor's
3 request proves the Contractor had no control over the cause of the
4 delay and could have done nothing to avoid or mitigate the delay, and
5 that the delay did not result from a risk allocated to the Contractor
6 under the Contract Documents.
7

8 26.3 The Contractor shall not be entitled to an extension of the Contract Time for delays
9 unless such delays impacted the ability of the Contractor to achieve Delivery by the
10 specified deadline. Delays that impact the Contractor's ability to achieve planned
11 early Delivery shall not be the subject of a time extension. Extensions of Contract
12 Time will be evaluated on a per-Vessel basis. An extension of Contract Time found
13 justified for one Vessel, may or may not justify an extension of Contract Time for
14 other Vessel(s).
15

16 WSF will not allow a time extension for any cause listed above if it resulted from the
17 Contractor's default, collusion, action or inaction, or failure to comply with the
18 Contract Documents. Neither shall the Contractor be entitled to a time extension
19 under circumstances where any adjustment to the Contract time is prohibited or
20 barred by the Contract Documents.
21

22 26.4 The Contractor acknowledges and agrees the Contract Time designated in Exhibit 5 is
23 sufficient to do all the Contract Work. For this reason, the Contractor shall not be
24 entitled to, and WSF will not grant, a time extension for:
25

- 26 • Unsuitable Weather
- 27
- 28 • Failure to obtain any or all necessary materials and workers
- 29
- 30 • Changes, protest, or events that do not delay the completion of the Contract
- 31 Work or prove to be an invalid or inappropriate time extension request.
- 32
- 33 • Delays caused by WSF disapproval of Working Drawings or other submittals
- 34 required under the Contract Documents
- 35
- 36 • Rejection of faulty work, materials, or equipment
- 37
- 38 • The Contractor's failure to meet the requirements of the Contract Documents
- 39
- 40 • Delays by any Subcontractors or suppliers.
- 41
- 42 • Delays that do not affect the Contractor's ability to meet the Delivery Date(s)
- 43 of the Vessel(s).
- 44
- 45 • Delays in obtaining approval of the Authoritative or Regulatory Agencies that
- 46 are required to be obtained by the Contractor.

1
2 26.5 The Contractor's entitlement to, and duration of, any time extension shall be
3 determined by WSF, and such determination will be final, subject to protest by the
4 Contractor under the "Procedure and Protests by the Contractor" Article.

5
6 26.6 Under no circumstances will the Contractor be entitled to any extension of the
7 Contract Time for any delay resulting from causes that should have been known or
8 reasonably discovered and mitigated by the Contractor.
9

10 11 **27. DISPOSAL OF SCRAP** 12

13 27.1. All scrap resulting from accomplishment of this Contract is the property of the
14 Contractor to be properly disposed as it sees fit. Scrap is defined as property that has
15 no reasonable prospect of being sold except for the recovery value of its basic
16 material content and is not identified for retention by WSF. The determination as to
17 which materials are scrap will be made, or concurred in, by the WSF Representative.
18

19 27.2. As consideration for the value of scrap, the Contractor's Bid Price shall be a net price
20 reflecting the estimated value of the scrap.
21

22 27.3. This requirement is not intended to conflict in any way with other Articles of this
23 Contract, nor does it relieve the Contractor of any other requirement under such
24 Articles.
25

26 27 **28. WARRANTY DEFICIENCIES AND REMEDIES** 28

29 28.1. "Warranty Deficiencies" include any deficiency, imperfection, fault, inferiority or
30 defect in the workmanship, materials and design of the Contract Work or the fitness
31 of the Vessel with respect thereto, or the failure of Contractor's workmanship,
32 materials or design to meet the terms of the Contract Documents. Without limiting
33 the foregoing, the term "Warranty Deficiencies" shall include any unsatisfactory
34 vibrations, noise or temperature levels. "Correction Period" shall mean a period of
35 twelve (12) months from the Delivery plus any extension provided for herein;
36 provided such Correction Period shall not be a limitation on warranties reserved by or
37 granted to WSF under this Article.
38

39 28.2. Notwithstanding any action or inaction by WSF or any of the Authoritative Agencies
40 in connection with Contract Work, if at any time within the Correction Period there
41 shall appear, arise, exist or occur any Warranty Deficiency, whether or not actually
42 discovered by WSF during the Correction Period, said Warranty Deficiency shall be
43 corrected, at the Contractor's expense, to comply with the requirements of the
44 Contract Documents; Provided, however, the Contractor shall not be responsible for
45 the cost of correcting any deficiency to the extent that such deficiency is due to

1 ordinary wear and tear. At the discretion of WSF, any work required to be performed
2 by the Contractor pursuant to the provisions of this Article shall be carried out:

3
4 A. At the Vessel's home port unless impractical; or

5
6 B. With the concurrence of WSF, while the Vessel is underway; or

7
8 C. If neither of the foregoing options is available, at a Shipyard provided by, and
9 with all expenses paid by, the Contractor.

10
11 28.3. WSF shall notify the Contractor in writing of any Warranty Deficiency for which the
12 Contractor is liable pursuant to Article 28.2 above within twenty-one (21) days after
13 its discovery. Whenever WSF discovers a Warranty Deficiency and decides to
14 correct it or have it corrected, WSF shall promptly give the Contractor written notice
15 thereof. Whenever practicable (taking into consideration the necessity of keeping the
16 Vessel performing its usual service), the Contractor shall be given an opportunity to
17 inspect and correct the Warranty Deficiency or damage unless WSF determines that
18 immediate correction by another source is essential.

19
20 Whenever practical (taking into consideration the necessity of keeping the Vessel
21 performing its usual service), the Contractor shall be given complete access to the
22 Vessel and to all records of WSF relating thereto for the purpose of verifying the
23 existence of the Warranty Deficiency and of determining the Contractor's obligation
24 to correct it.

25
26 28.4. Notwithstanding the foregoing, WSF may independently arrange to have Warranty
27 Deficiencies corrected at sea or by another shipyard or ship repair yard at any port
28 satisfactory to WSF. Such correction shall apply only in cases where WSF has
29 provided the Contractor with prior written notice of its intent to so correct the
30 Warranty Deficiency and the Contractor has failed to repair the problem within
31 twenty-one (21) days of the date of that notice, or such shorter time as is deemed
32 appropriate by WSF when the Warranty Deficiency is the cause of any emergency or
33 non-emergent inconvenience or difficulty to WSF or to the traveling public.

34
35 In the event of such correction, the Contractor shall be liable to WSF for the expense
36 incurred at the chosen yard, including the cost of drydocking the Vessel within the
37 limitations of this Article hereof, if necessary. Alternatively, in the event the
38 corrections are performed by WSF itself, the Contractor shall be liable for all
39 reasonable costs incurred by WSF in performing the correction.

40
41 28.5. For a determination of any underwater Warranty Deficiencies, WSF, at its expense,
42 may drydock the Vessel or carry out an underwater survey, during or after the
43 Correction Period. WSF shall pay, at its expense, for the haul day, re-float day and
44 any lay days required to accomplish the Vessel's normal drydocking maintenance;
45 Provided, however, that if a Warranty Deficiency is discovered, the correction of
46 which requires additional drydocking time, the Contractor, in addition to the cost of

the correction of the Warranty Deficiency, as provided in this Article, shall also pay for each additional drydocking lay day.

If it becomes necessary to drydock the Vessel(s) solely for the correction of a Warranty Deficiency, the cost of the entire drydocking required for the correction of the Warranty Deficiency, as well as the cost of remedying the Warranty Deficiency, as provided in this Article, shall be at the expense of the Contractor.

28.6. The Contractor shall save and hold WSF harmless with respect to any taxes, ad valorem duty or similar duty imposed or assessed on any payment made in connection with the correction of a Warranty Deficiency.

28.7. The Contractor shall assign to WSF any guarantee or warranty furnished in connection with its purchase of any equipment, materials or items used in the work done pursuant to this Article. The Contractor shall extend such guarantees and warranties so that they remain in effect, at a minimum, through the end of the Correction Period.

28.8. At the end of the Correction Period, the Contractor agrees to transfer and assign to WSF, as to any item of material, equipment and machinery installed in the Vessel, the guarantee or warranty rights of the Contractor against the vendor or supplier of such items where, under the terms of such vendor's or supplier's guarantee, the vendor's obligations extend for a period beyond the Correction Period.

28.9. The Contractor's warranty with regard to all Owner Furnished Equipment shall be limited to workmanlike installation in accordance with the manufacturer's specifications, approved marine construction and repair practices and the Contract Documents. This provision shall not be constructed in any manner as a limitation on the Contractor's responsibility for damages caused by unworkmanlike installation by the Contractor or other failure to comply with the requirements of the Contract Documents.

28.10. For the first thirty (30) days after Delivery, the Contractor shall, at its sole risk and expense, place a warranty engineer aboard the Vessel for eight (8) hours per day, five (5) days per week. The warranty engineer shall remain "on call" during the remainder of each day, subject to four (4) hours prior notice by WSF. WSF shall determine the actual days and times for such service in advance. From the thirty-first (31st) day through ninety (90) days after Delivery, the Contractor shall, at its sole risk and expense, have a warranty engineer "on call" and ready to board the Vessel upon at least two (2) hours prior notice by WSF. Such "on-call" service during the second service period shall not exceed the days per week and hours per day specified above for the initial service period.

The warranty engineer shall represent the Contractor and have full opportunity to observe and inspect the working of the Vessel in all its parts, but without any directing or controlling authority over the Vessel. The provision of a warranty

1 engineer aboard the Vessel shall not affect the length of the Correction Period
2 specified in this Article.
3

4 28.11. If, in the good faith opinion of WSF, the repair of Warranty Deficiencies requires that
5 the Vessel be removed from service, the Correction Period for the Vessel shall be
6 adjusted to cover a period extending for a period of time equal to the number of days
7 (or partial days) which the Vessel was out of service due to the repair of the Warranty
8 Deficiency. In all cases, upon the correction of a Warranty Deficiency, the
9 Correction Period with respect to the piece of equipment or other item on which the
10 repair was made shall be adjusted to cover a period extending to twelve (12) months
11 from the date repair of such item was completed. In all events, the maximum
12 Correction Period will be twenty-four (24) months.
13

14 28.12. The Contractor shall further warrant all equipment components against latent
15 manufacturing defect failures occurring during the Correction Period and for an
16 additional period of one (1) year immediately following the Correction Period. Any
17 undetected defect that is determined to have existed prior to Delivery to WSF is a
18 latent manufacturing defect. Any equipment failure attributable to a latent defect
19 shall be repaired or replaced by the Contractor with not adjustment in the Contract
20 Price.
21

22 28.13. Should any disagreement arise in connection with Warranty Deficiencies, the
23 Contractor may protest any action taken by WSF in the manner set forth in, and
24 subject to the terms of, the "Procedures and Protests by the Contractor" Article. If no
25 WSF Representative has been appointed, such protest will be made to the Project
26 Engineer.
27

28 28.14. Notwithstanding the "Claims" Article, WSF shall have all remedies available to it
29 under applicable law to enforce its rights under this Article.
30

31 28.15. The rights and remedies provided in this Article are in addition to, and not in
32 substitution for any rights and remedies which WSF might have as a matter of law or
33 equity or otherwise under the Contract Documents. The failure of WSF to exercise
34 the rights and remedies conferred upon it hereunder shall not constitute a waiver of
35 any of its rights or remedies at any subsequent time. WSF specifically reserves all
36 other written, oral, implied, statutory and common law warranties to WSF arising
37 from performance of the Contract Work.
38
39

40 **29. RIGHTS IN DATA**

41

42 29.1. Subject to Article 29.3 below, data which originates from this Contract shall be
43 "works for hire" as defined by the currently effective U.S. Copyright Act and shall be
44 owned by WSF without restriction or limitation of use. Data shall include, but not be
45 limited to: non-proprietary plans, specifications, drawings, calculations, reports, non-
46 commercial software programs and detailed software documentation, magnetic media

1 disks, pamphlets, books, surveys, documents, etc. Ownership includes the right to
2 copyright, patent, register and the ability to transfer these rights.
3

- 4 29.2. Subject to Article 29.3 below, data which is delivered under the Contract, but which
5 does not originate therefrom, shall be transferred to WSF with a non-exclusive,
6 royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform,
7 dispose of, and to authorize others to do so; Provided that such license shall be
8 limited to the extent which the Contractor has a right to grant such a license.
9

10 The Contractor shall make all reasonable efforts to advise WSF of: (i) all known or
11 potential invasions of privacy or proprietary information contained in such data; and
12 (ii) any portion of such data which was not produced in the performance of this
13 Contract. WSF shall receive prompt written notice of each notice or claim of
14 infringement received by the Contractor with respect to any data delivered under this
15 Contract.
16

- 17 29.3. Any document(s) or information addressed in Article 29.2 which the Contractor
18 believes is exempt from public disclosure (RCW 42.17.310) shall be clearly identified
19 by the Contractor and placed in a separate envelope marked with the Contract name,
20 the Contractor's name, and the words "Proprietary Data" along with a statement of
21 the statutory basis for such claim of exemption. WSF's sole responsibility shall be
22 limited to maintaining the above data in a secure area and to notify the Contractor of
23 any request(s) for disclosure within a period of five (5) years from WSF's receipt of
24 such data. Failure to so label such materials, or failure to provide a timely response
25 after notice of request for public disclosure has been given, shall be deemed a waiver
26 by the Contractor of any claim that such materials are, in fact, so exempt.
27
28

29 **30. PATENTED DEVICES, MATERIALS AND PROCESSES**

30

- 31 30.1. The Contractor shall assume all costs arising from the use of patented devices,
32 materials or processes used on or incorporated in the work, and agrees to indemnify,
33 defend and save harmless WSF, the Commission, Secretary, and their duly authorized
34 agents and employees from any nature for, or on account of, the use of any patented
35 devices, materials, or processes; Provided, such indemnity shall not apply in the case
36 of any Owner Furnished Equipment or any brand name item specified by WSF to be
37 used in performance of the Contract Work.

31. TERMINATION FOR DEFAULT

31.1. "Events of Default" of the Contractor under this Contract include, but are not limited to, the following:

- A. The Contractor's failure to prosecute the Contract Work with such diligence and in such manner as will enable it to complete such Contract Work on or before the Delivery Date of any Vessel and/or Contractor's failure to effect Delivery of any Vessel on the Delivery Date;
- B. The Contractor's failure to provide sufficient, properly skilled workers or satisfactory materials and equipment so as to be able to perform the Contract Work within the Contract Time;
- C. The Contractor's failure to relieve incompetent, unskilled or otherwise unsatisfactory workers upon WSF's direction;
- D. The Contractor's material failure in any other respect to perform any of its covenants, agreements, or undertakings under this Contract;
- E. The existence of any material inaccuracy in any warranty or representation made by the Contractor as of the time such warranty or representation was made;
- F. Disregard by the Contractor of laws, ordinance, rules, codes, regulations, orders or similar requirements of any public entity have jurisdiction;
- G. Performance of work by the Contractor which deviates from the requirements of the Contract Documents and neglect or refusal to correct non-conforming work rejected by WSF;
- H. The Contractor disregards the authority of WSF; or
- I. If the Contractor is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within fifteen (15) days of receipt of a request for assurance from WSF.

31.2. Once WSF determines that sufficient cause exists to terminate the Contract for default, WSF shall give written notice to the Contractor and its Surety specifying that the Contractor is in breach of the Contract, and that the Contractor is to remedy the

breach within 15 calendar days after the notice is sent. WSF may, in writing and at its option, extend such time period if, in WSF's sole judgment, an extension is justified.

If WSF determines that an emergency exists as a direct result of such default, WSF may immediately terminate the Contract effective upon the Contractor's receipt of written notice thereof. Emergencies include but are not limited to: endangerment of life or property; or failure to timely obtain insurance or Contract Security.

After the expiration of the default notice period, if the default(s) described in such notice has not been remedied by the Contractor to the satisfaction of WSF, WSF may, by serving written notice to the Contractor and Surety, terminate the Contract. In such event, WSF may take any of the following actions within a reasonable period of time upon notice to the Surety and the Contractor:

- A. Require completion of the Contract Work by the Surety or its agents or independent contractors satisfactory to WSF, in which event the Surety's obligation to complete the Contract Work shall not be limited by the penal sum of the Contract Security bond(s); provided, however, the Surety may elect to instead pay the full amount of the penal sum of the Contract Security bond(s) in complete discharge and exoneration of such bond(s), and all of the liabilities of the Surety relating thereto; or
- B. WSF may complete the Contract Work itself by an independent contractor or otherwise, in which event the Contractor and Surety shall be fully liable for all added cost, expense or damage incurred by WSF.

Upon termination, WSF may enter the Shipyard, take possession of and remove any e Vessel(s) (which shall not be Delivery) and any Vessel material purchased from the Shipyard or wherever else it may be located, with or without judicial intervention. WSF may transport any Vessel(s) and any such materials to another facility designated by WSF for the purpose of completing the Contract Work. Upon WSF's request, the Contractor shall assign to WSF or the Surety all of its rights under such subcontracts and orders for material, services and supplies to be used in the performance of said Contract Work, as may be designated by WSF.

- 31.3. Should WSF elect to terminate the Contract, the Contractor shall immediately deliver to WSF or the Surety, as may be directed by WSF, possession of any or all Drawings or design related documents of whatsoever nature and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, schedules, samples, shop drawings, electronic files and other documents and facilities related to the Vessels that WSF deems necessary for completion of the Contract Work. WSF shall have the unequivocal right to use said documents to complete the Contract Work. Irrespective of the termination, the Contractor and its Surety shall remain fully responsible and liable for

1 all errors or omissions of any nature in the Drawings or design related documents as
2 said errors or omissions existed at the time of termination.

3
4 If WSF elects to pursue one remedy, it will not bar WSF from pursuing other
5 remedies on the same or subsequent breaches.

6
7 Upon receipt of a notice that completion of the Contract Work is being transferred to
8 the Surety, the Surety shall enter upon the premises and take possession of all
9 materials, tools, and appliances for the purpose of completing the Contract Work
10 included under the Contract and employ by contract or otherwise any person or
11 persons satisfactory to WSF to finish the Contract Work and provide the materials.
12 Such employment shall not relieve the Surety of its obligations under the Contract
13 and the bond(s). If there is a transfer of completion of the Contract Work, allowed
14 under the Contract Documents to the Surety, payment on estimates covering Contract
15 Work subsequent to the transfer shall be made, to the extent permitted under law, to
16 the Surety or its agent without any right of the Contractor to make any claims thereto.

17
18 If WSF terminates the Contract or provides such sufficiency of labor or materials as
19 required to complete the Contract Work, the Contractor shall not be entitled to receive
20 any further payments under the Contract until all Contract Work has been fully
21 performed and finally completed. The Contractor and its Surety shall bear any extra
22 expenses incurred by WSF in completing the Contract Work by the Contractor. If
23 liquidated damages are provided in the Contract, the Contractor and its Surety shall
24 be liable for such liquidated damages as provided in the Contract Documents. After
25 all the Contract Work has been completed, WSF will calculate the total expenses and
26 damages for the completed Contract Work. If the total expenses and damages are less
27 than any unpaid balance due the Contractor, the excess will be paid by WSF to the
28 Contractor. If the total expenses and damages exceed the unpaid balance, the
29 Contractor and the Surety shall be jointly and severally liable to WSF and shall pay
30 the difference to WSF on demand.

31
32 In exercising WSF's right to prosecute the completion of the Contract Work, WSF
33 shall have the right to exercise its sole discretion as to the manner, method, and
34 reasonableness of the costs of completing the Contract Work. In the event the WSF
35 or the Surety takes bids for remedial Contract Work or completion of the Contract
36 Work, the Contractor shall not be eligible for the award of such contract.

37
38 31.4. The rights conferred upon WSF under the terms of this Article shall be cumulative
39 (unless clearly inconsistent) and in addition to, and not in substitution of, any other
40 rights which WSF has under this Contract, the Contract Security, in law or in equity.
41 The failure of WSF to exercise the rights and remedies conferred upon it hereunder,
42 shall not constitute a waiver of any of its rights or remedies at any subsequent time.
43 Any retention or payment of monies to the Contractor by WSF will not release the
44 Contractor from liability.
45

1 31.5. If WSF has terminated this Contract for default, and it is later determined for any
2 reason that the Contractor was not in default, the rights and obligations of the parties
3 shall be the same as if the notice of termination had been issued pursuant to the
4 "Termination for Public Convenience" Article.
5
6

7 **32. TERMINATION FOR PUBLIC CONVENIENCE**

8

9 32.1. Upon written notice to the Contractor, WSF may terminate the Contract in whole, or
10 from time to time in part, whenever:
11

12 A. The Contractor is prevented from proceeding with the Contract Work as a
13 direct result of an Executive Order of the President with respect to the
14 prosecution of war or in the interest of national defense; or an Executive
15 Order of the President or Governor of the State with respect to the
16 preservation of energy resources;
17

18 B. The Contractor is prevented from proceeding with the Contract Work by
19 reason of a preliminary, special or permanent restraining order of a court of
20 competent jurisdiction where the issuance of such restraining order is
21 primarily caused by acts or omissions of persons or agencies other than the
22 Contractor; or
23

24 C. WSF determines in its sole discretion that such termination is in its best interest.
25

26 32.2. Whenever the Contract is terminated in accordance with this Article, payment will be
27 made in accordance with the "Progress Payments" and "Contract Changes" Articles
28 for the actual work performed.
29

30 32.3. After receipt of a notice of termination in accordance with the above procedures, the
31 Contractor, in order to receive payment, shall submit to WSF its claim ("Termination
32 Claim") in accordance with the procedures under the "Contract Changes," "Claims"
33 and "Audit" Articles. The Termination Claim shall be submitted promptly but in no
34 event later than sixty (60) days from the effective date of termination. The Contractor
35 agrees to make all records available to the extent deemed necessary by the WSF
36 Project Engineer to verify the Contractor's payment request. A Termination Claim,
37 including Subcontractors, shall be subject to audit as provided in the "Audit" Article.
38

39 If the Contractor and WSF cannot agree as to the proper amount of payment, then the
40 matter will be resolved pursuant to the "Contract Changes" and "Claims Resolution"
41 Article.

33. SUSPENSION OF WORK

33.1. WSF may order suspension of all or any part of the Contract Work if:

- A. Extremely severe unseasonable weather and such other conditions beyond the control of the Contractor that prevent satisfactory and timely performance of the Contract Work; or
- B. The Contractor does not comply with the Contract or the WSF Representative's orders.
- C. WSF deems in its sole discretion that a suspension is appropriate for any reason.

When ordered by the WSF Representative to suspend or resume Contract Work, the Contractor shall do so immediately.

33.2. If the Contract Work is suspended for reasons set forth in Article 33.1.A above, the Contractor shall be entitled to an extension of Contract Time to the extent allowed under the "Extension of Time" Article of the Contract. Such an extension of the Contract Time shall be the Contractor's sole and exclusive remedy for a suspension order by WSF for the reasons set forth in Article 33.1.A and the Contractor shall not be entitled to additional payment or compensation of any form on account of such extension.

33.3. If the Contract Work is suspended for reasons set forth in Article 33.1.B above, the Contractor shall not be entitled to any increase or adjustment of any form in the Contract Time or Contract Price nor shall the Contractor be relieved from its responsibilities under the Contract Documents in any manner.

33.4. If the performance of all or any part of the Contract Work is suspended for an unreasonable period of time by an act of WSF in the administration of the Contract, or by failure to act within the time specified in the Contract (or if no time is specified, within a reasonable time), WSF will make an adjustment for any increase in the Contract Price and/or Contract Time for the performance of the Contract (excluding profit) necessarily caused by the suspension. Any adjustment of Contract Time shall be pursuant to, and only to the extent allowed by, the "Extension of Time" Article of the Contract. However, no adjustment will be made for any suspension if: (i) the performance would have been suspended by any other cause, including the fault or negligence of the Contractor; or (ii) an equitable adjustment is provided for or excluded under any other provision of the Contract.

33.5. If the Contractor believes that the performance of the Contract Work is suspended for an unreasonable period of time and such suspension is the responsibility of WSF, the Contractor shall submit a written notice of Protest to WSF and otherwise comply with the requirements and conditions of the "Procedure and Protests by the Contractor"

Article. The Contractor shall keep full and complete records of the cost and additional time of any suspension, delay or interruption which records and any other record deemed necessary by WSF shall be subject to audit pursuant to the "Audit" Article of the Contract.

33.6. The WSF Representative will determine if an adjustment in Contract Price and/or Contract Time is due as provided in this Article. The adjustment for increase in Contract Price, if due, shall be subject to the limitations provided in the "Contract Changes" Article, provided that no profit of any kind will be allowed on any increase in Contract Price necessarily caused by the suspension. Request for extensions of Contract Time will be evaluated in accordance with the "Extension of Time" Article.

33.7. WSF's determination as to whether an adjustment in Contract Price and/or Contract Time should be made will be final. No claim by the Contractor under this Article shall be allowed unless the Contractor has followed the procedures provided in this Article and otherwise complied with the procedures, and met the requirements of, in the "Procedure and Protests by the Contractor", "Claims" and "Extension of Time" Articles.

34. SUBCONTRACTORS

34.1. WSF recognizes that the Contractor may desire to subcontract part of the Contract Work. However, the Contractor must obtain WSF's prior written consent as to each such Subcontractor whose initial subcontract value equals or exceeds Three Hundred Thousand Dollars (\$300,000). WSF may reject a proposed Subcontractor if WSF is not satisfied with the proposed Subcontractor's record, equipment, experience, and ability. Contract Work done by the Contractor itself shall account for at least fifty percent (50%) of the total Contract Work on the Vessels. WSF, at its sole discretion, may require review and acceptance of any Subcontractor regardless of subcontract value.

34.2. All work to be subcontracted shall be evidenced by a written and fully executed agreement between the Contractor and the Subcontractor or between the Subcontractor and any other Subcontractor. For those Subcontractors requiring prior acceptance by WSF under Article 34.1, Contractor shall provide a copy of the subcontract to WSF within three (3) days of the Notice to Proceed and in all events before such subcontract work commences. The written agreement shall disclose all prices, rates, terms, and conditions for work performed under the subcontract. All subcontracts shall provide that all obligations imposed by the Contract Documents on the Contractor, with respect to or in connection with the Contract Work to be subcontracted, shall be assumed by such Subcontractor. All subcontracts directly with the Contractor shall also provide that at the election of WSF, such subcontract may be assigned to WSF, the Surety, or their agents or independent contractors, in the event of termination of the Contract pursuant to the "Termination for Default" or "Termination for Public Convenience" Articles of the Contract. In the event that

- 1 WSF discovers at any time that a subcontract does not comply with such provisions,
2 WSF shall have the right to require the Contractor to terminate or have the
3 subcontract terminated immediately, and the Contractor shall not be entitled to any
4 adjustment in the Contract Price or the Contract Time as a result of such termination.
5 .
6
- 7 34.3. WSF acceptance of a Subcontractor shall not:
- 8
- 9 A. Relieve the Contractor of any responsibility for performance of all of the
10 Contract Work;
- 11
- 12 B. Relieve the Contractor of any obligation or liability under the Contract or
13 relieve the Contractor and/or any Surety of any obligation or liability under
14 Contract Security;
- 15
- 16 C. Create any contract between the WSF and the Subcontractor; or
- 17
- 18 D. Convey to the Subcontractor any rights against WSF.
- 19
- 20 34.4. To the extent that any first tier Subcontractor desires to further subcontract any
21 portion of the Contract Work, it shall do so in accordance with this Article as if it
22 were the Contractor. Such lower tier Subcontractors shall be deemed Subcontractors
23 for purposes of this Contract. No direct Subcontractor of the Contractor may further
24 subcontract more than twenty-five percent (25%) of the Contract Work that was
25 contracted to it.
26
- 27 34.5. WSF will not consider as subcontracting the purchase or delivery of materials to the
28 Shipyard unless such materials are furnished by an approved Subcontractor as part of
29 its subcontract. WSF reserves the right to accept or reject any suppliers from whom
30 the Contractor purchases or receives materials for use in the Contract Work.
31
- 32 34.6. On a WSF provided form, the Contractor shall certify to the amounts paid to any
33 Disadvantaged Business Enterprise firms that were Subcontractors. This certification
34 must be provided to WSF on a quarterly basis.
35
- 36 34.7. WSF reserves the right to inspect ongoing work and completed work at the
37 Subcontractor's plant at any time. If dissatisfied with any part of the subcontracted
38 work, WSF may request in writing that the Subcontractor be removed. The
39 Contractor shall comply with this request at once and shall not employ the
40 Subcontractor for any further Contract Work. The written request shall include a
41 WSF statement that the subcontract work does not comply with the requirements of
42 the Contract Documents.
43
- 44 34.8. All Subcontractors and suppliers must warrant their work and/or materials at least to
45 the same extent as provided in this Contract. WSF shall be a third party beneficiary of

- 1 all such warranties, entitled to enforce such rights directly against the Subcontractor
2 or supplier.
3
- 4 34.9. WSF will not pay the Contractor for subcontracted work under the Contract until the
5 following documents have been properly completed and submitted to, and where
6 required by WSF, approved by the WSF Representative:
7
- 8 A. Request to Sublet Work (Form 421-012);
9
 - 10 B. Statement of Intent to Pay Prevailing Wage (Form F700-029-000 latest
11 revision), to be submitted to the Washington State Department of Labor and
12 Industries with a copy to the WSF Representative;
13
 - 14 C. A duplicate copy of the original signed Subcontract Agreement between the
15 Contractor and the Subcontractor;
16
 - 17 D. Such other documents as WSF may reasonably request, including a Release of
18 Claims Certification.
19
- 20 34.10. The Contractor's records pertaining to the requirements of this Article shall be open to
21 inspection or audit by representatives of WSF prior to, and for a period of not less
22 than six (6) years after, the date of Final Acceptance. The Contractor shall retain the
23 records for that period. The records of all Subcontractors shall be open to similar
24 inspection or audit for the same period, and the Contractor shall be responsible for
25 assuring such records are maintained.
26
- 27 34.11. The Contractor shall be responsible for making certain that restrictions in the
28 enforcement of lien and *in rem* rights are included in all of its contracts with
29 Subcontractors and suppliers of materials, as specified in the "No Arrests or
30 Attachments" Article.
31
32

33 **35. EMPLOYMENT OF OTHERS**

34

- 35 35.1. WSF shall be permitted to utilize any of its employees, officers, crew or direct labor
36 contractors or other personnel in any work other than Contract Work upon the Vessel,
37 at any time, provided that the Contractor will have previously received notification of
38 such employment and such work does not materially interfere with the performance
39 of the Contract Work by the Contractor. WSF shall not be required to pay to the
40 Contractor any penalty, premium or other sum for the exercise of this right.
41
- 42 35.2. In the event that WSF and the Contractor cannot reach agreement on the terms of a
43 Change Order, WSF may, at its sole option upon two (2) days written notice, have the
44 right to engage any agent, employee or other outside contractor to perform the work
45 involved. The Contractor warrants that those workers utilized based upon the above

provisions shall, along with their equipment, have free access to the Shipyard and the Vessel at all times work is to be accomplished.

- 35.3. The Contractor hereby further undertakes to cooperate with, and provide to WSF or its said employees, officers, crew and all contractors described in this Article all necessary services and assistance required by them to assist them in carrying out their work in order that the work is substantially completed upon the Vessel not later than the Delivery Date. Any assistance over and above that called for in the Contract Documents should be provided only as authorized by Change Order.

36. RESPONSIBILITIES FOR THE WORK AND DAMAGE

- 36.1 All Contract Work and material for each Vessel, including any Change Order Work, shall be at the sole risk and responsibility of the Contractor until Delivery of such Vessel has been made and accepted by WSF.

The Contractor shall maintain, rebuild, restore, repair, or replace all Contract Work on any Vessel that is injured or damaged prior to the date of Delivery of such Vessel and acceptance by WSF and shall bear all of the expense to do so, except for the cost of damage to the permanent work in the State of Washington caused by: (a) acts of God, such as earthquake, floods, or other cataclysmic phenomenon of nature, or (b) acts of the public enemy or of governmental authorities, provided however, that these exceptions shall not apply should damages result from the Contractor's failure to take reasonable precautions or to exercise sound design, engineering and construction practices in conducting the Contract Work.

The Contractor shall also have full responsibility during such period for rebuilding, repairing and restoring all other property at the Shipyard whether owned by the Contractor, WSF, or any other person.

If the performance of the Contract Work is delayed, as a result of damage for which the Contractor is not responsible under the Contract Documents, an extension of Contract Time will be evaluated in accordance with the "Extension of Time" Article. Nothing contained in this Article shall be construed as relieving the Contractor's responsibility for damage resulting from the Contractor's design, operations or negligence, nor shall the Contractor be relieved from full responsibility for making good any defective work or materials as required under the Contract Documents.

- 36.2. The State, Commission, Secretary and all officers and employees of the State, including but not limited to those of the Department, will not be responsible in any manner for any loss or damage that may happen to the Contract Work or any part; for any loss of material or damage to any of the materials or other things used or employed in the performance of Contract Work; for injury to or death of any person, either workers or the public; or for damage to the public for any cause which might

1 have been prevented by the Contractor, or the workers, or anyone employed by the
2 Contractor.

3
4 36.3. The Contractor shall be responsible for any liability imposed by law for injuries to, or
5 the death of, any persons or damages resulting from any cause whatsoever during
6 performance of the Contract Work, or before Final Acceptance.

7
8 36.4. Subject to the limitations in this Article, the Contractor shall indemnify, defend and
9 save harmless WSF, the State, the Commission, the Secretary, and all officers and
10 employees of WSF and the State and their respective successors and assigns and their
11 respective shareholders, officers, directors, agents and employees (collectively
12 referred to herein as the "Indemnified Parties") from and against any and all claims,
13 causes of action, suits, legal or administrative proceedings, damages, losses,
14 liabilities, response costs, costs and expenses, including any injury to, or death of,
15 persons, or damage to, or loss of, property (including damage to utility facilities), and
16 including attorneys' and expert witness fees and costs, arising out of, relating to or
17 resulting from:

18
19 (a) The breach of the Contract (or any representation or warranty herein) by the
20 Contractor, its employees, agents, officers, Subcontractors, suppliers or any
21 other persons performing any of the Contract Work for whom the Contractor
22 may be contractually or legally responsible. (The requirement to provide an
23 indemnity for breach of contract set forth in this Article is intended to provide
24 protection to WSF with respect to third party claims associated with such
25 breach. It is not intended to provide WSF with an alternative cause of action
26 for damages incurred directly by WSF with respect to such breach); and/or

27
28 (b) The failure or alleged failure by the Contractor or its employees, agents,
29 officers or Subcontractors or any other persons for whom the Contractor may
30 be contractually or legally responsible, to comply with any applicable
31 environmental laws or other legal requirements (including legal requirements
32 regarding handling, generation, treatment, requirements, storage,
33 transportation and disposal of hazardous materials) or Regulatory Agencies in
34 performing the Contract Work; and/or

35
36 (c) Any alleged patent or copyright infringement or other allegedly improper
37 appropriation or use of trade secrets, patents, proprietary information, know-
38 how, copyright rights or inventions in performance of the Contract Work, or
39 arising out of any use in connection with the Contract of methods, processes,
40 designs, information or other items furnished or communicated to WSF or
41 another Indemnified Party pursuant to the Contract. If WSF or another
42 Indemnified Party is enjoined from the operation or use of the Contract Work,
43 or any part thereof, as the result of any patent or copyright suit, claim, or
44 proceeding, the Contractor shall at its sole expense take reasonable steps to
45 procure the right to operate or use the Contract Work. If the Contractor
46 cannot so procure such right within a reasonable time, the Contractor shall

promptly, at Contractor's option and at Contractor's expense: (i) modify the Contract Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Contract Work with Contract Work that does not infringe or violate any such patent or copyright; and/or

(d) The alleged negligent act or omission or willful misconduct of the Contractor, its employees, agents, officers, Subcontractors, suppliers or any other persons performing any of the Contract Work for whom the Contractor may be contractually or legally responsible; and/or

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of the Contractor or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Contract made to or earned by the Contractor or any of its Subcontractors or any of their respective agents, officers, or employees under the Contract Documents; and/or

(f) Any and all stop notices, retainage or bond claims, and/or Liens filed in connection with the Contract Work, including all expenses and attorneys' fees incurred in discharging any stop notice, claims, or Liens, provided that WSF is not in default in payments owing to the Contractor with respect to such Contract Work; and/or

(g) Any release or threatened release of hazardous materials or the handling, transportation or disposal of hazardous materials:

[i] Attributable to the negligence, willful misconduct, or breach of Contract by the Contractor or its employees, agents, officers or Subcontractor or any other persons for whom the Contractor may be contractually or legally responsible; or failure of any of them to comply with applicable environmental laws, regulations, ordinances or rules; or

[ii] Which was brought onto the Vessels or Shipyard, or caused by the Contractor or its employees, agents, officers or Subcontractors or any other persons for whom the Contractor may be contractually or legally responsible; and/or

(h) The claim or assertion by any contractor or vendor, including without limitation WSF's OFE vendors and PSI contractor, of inconvenience, disruption, delay or loss caused by interference by the Contractor (or its employees, agents, officers, or Subcontractors or any other persons for whom the Contractor may be contractually or legally responsible) with, or hindering the progress or completion of work being performed by, other contractors or vendors employed by WSF or failure of the Contractor or its employees, agents, officers, or Subcontractors or any other persons for whom the Contractor may be contractually or legally responsible to

1 cooperate reasonably with other contractors or vendors in accordance
2 therewith.
3

4 36.4.1 The Contractor shall also release, defend, indemnify and hold harmless the
5 indemnified parties from and against, any and all claims, damages, losses,
6 liabilities, costs and expenses, including attorney's fees, arising out of,
7 relating to, or resulting from, errors, omissions, inconsistencies, or other
8 defects in the Technical Specification, the Contractor's Technical Proposal,
9 Working Drawings, or other design related documents or information of any
10 form provided or prepared by, or on behalf of, the Contractor, regardless or
11 whether such errors, omissions, inconsistencies, or other defects were also
12 included in any OFE or the Technical Specification; provided however, the
13 Contractor shall not have any indemnity obligation under this sub-Article for
14 damages resulting from a design or manufacturing defect in any OFE, not
15 reasonably discoverable by the Contractor during preparation of its Technical
16 Proposal or performance of the Contract Work. The Contractor agrees that
17 because any OFE or the Technical Specification provided by WSF were
18 subject to extensive review and analysis by the Contractor during preparation
19 of its Technical Proposal, it is appropriate for the Contractor to assume the
20 indemnity obligation of this sub-Article even though the indemnified claims
21 may be related to errors, omissions, inconsistencies and other defects in any
22 OFE or the Technical Specification provided by WSF.
23

24 36.4.2 The Contractor will not be required to indemnify, defend, or save harmless an
25 Indemnified Party from claims relating to personal injury or property damage
26 as provided in this Article if the claim, suit, or action is caused by the sole
27 negligence or willful misconduct of such Indemnified Party. Where such
28 claims, suits, or actions result from the concurrent negligence of (a) an
29 Indemnified Party or the Indemnified Party's agents or employees and (b) the
30 Contractor or the Contractor's agent or employees, the indemnity provisions
31 provided in this Article shall be valid and enforceable only to the extent of the
32 Contractor's negligence or the negligence of its agents and employees.
33

34 36.4.3 In claims by an employee of the Contractor, a Subcontractor, anyone directly
35 or indirectly employed by them, or anyone for whose acts they may be liable,
36 the indemnification obligation under this Article shall not be limited by any
37 limitations on the amount or type of damages, compensation or benefits
38 payable by or for the Contractor or the Subcontractor under the Washington
39 State Industrial Insurance Act, Title 51 RCW, workers' compensation,
40 disability benefit or any other employee benefits laws. In addition, for
41 purposes of indemnification only, the Contractor specifically and expressly
42 waives any immunity that may be granted it under the Washington State
43 Industrial Insurance Act, Title 51 RCW. The Contractor's waiver of
44 immunity by the provisions of this Article does not extend to claims by the
45 Contractor's employees directly against the Contractor.
46

1 36.4.4 The Contractor hereby acknowledges and agrees that it is the Contractor's
2 obligation to cause the Vessels to be designed, and to be constructed in
3 accordance with the Contract Documents and that the Indemnified Parties are
4 fully entitled to rely on the Contractor's performance of such obligation. The
5 Contractor further agrees that any review and/or approval by WSF and/or
6 others hereunder shall not relieve the Contractor of any of its obligations
7 under the Contract Documents or in any way diminish its liability for
8 performance of such obligations or its obligations to provide indemnities
9 hereunder.

10
11 36.5. The Contractor shall exercise all necessary precautions throughout the life of the
12 Contract to prevent pollution and damage to property.
13
14

15 **37. CONTRACT SECURITY** 16

17 37.1. The Contractor shall provide WSF Contract Security to protect against performance
18 and payment loss exposure, as set forth in this Article. All Contract Security shall
19 cover all of the Contract Work and all Change Orders.
20

21 No alternate forms of Contract Security are authorized for this Contract.
22

23 37.2. Performance Security
24

25 37.2.1. The Contractor shall provide WSF with Contract Security for performance
26 exposure in an amount **equal to nine and seventy-one hundredths percent**
27 **(9.71%) of the Bid Price.** Contemporaneously with the execution of this
28 Contract, the Contractor shall provide evidence satisfactory to WSF of such
29 protection.
30

31 37.2.2. Performance Security shall be in the form of:
32

33 A. A contract bond to protect WSF against performance and payment
34 loss exposure, in an amount **equal to eleven and forty two**
35 **hundredths percent (11.42%) of the Bid Price;** or
36

37 B. A performance bond to protect WSF against performance loss
38 exposure only, in an amount **equal to nine and seventy one**
39 **hundredths percent (9.71%) of the Bid Price.**
40

41 37.2.3. The Contract Security for performance exposure shall ensure that WSF
42 receives warranty coverage for all losses resulting from any defects in
43 material and workmanship during the warranty period after Delivery. With
44 the written approval of WSF, the Contractor may vary the form of
45 Performance Security to cover the warranty period after Delivery; provided
46 that the form of any Contract Security shall comply with the relevant

provisions of this Article; and further provided that warranty coverage shall be at least as effective in protecting WSF as that contained in the WSF's standard contract bond. Warranty coverage for the Vessel under a contract or performance bond shall be equal to at least ten percent (10%) of the combined performance and payment security amount at the time of Delivery.

37.3. Payment Security

37.3.1. WSF requires protection against (i) the Contractor's failure to pay all laborers, mechanics, Subcontractors, agents, suppliers, materialmen and others who have provided services and materials for work under the Contract; (ii) all taxes and other governmental obligations related to this Contract; and (iii) all wage rates required by law. This protection shall be in an amount **equal to one and eighty four hundredths percent (1.84%) of the Bid Price**. Contemporaneously herewith, the Contractor shall provide evidence satisfactory to WSF of such protection.

37.3.2. Payment Security shall be in the form of:

- A. A contract bond to protect WSF against performance and payment loss exposure, in an amount **equal to eleven and forty two hundredths percent (11.42%) of the Bid Price**; or
- B. A payment bond to protect WSF against payment loss exposure only, in an amount **equal to one and eighty four hundredths percent (1.84%) of the Bid Price**.

37.4. A contract bond, performance bond or payment bond shall be upon the forms furnished by WSF in the RFP Package. Bonds must be issued by a Surety with a Best's rating of at least "A" or better and Financial Size Category of VIII or better by A.M. Best Co. The Surety shall: (1) be registered with the Washington State Insurance Commissioner, and (2) appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner.

37.5. WSF reserves the right to require additional Contract Security at any time the Contract Work increases WSF's exposure to performance or payment loss. In such event, the Contractor shall provide additional Contract Security so that the total Contract Security is adequate to protect one hundred percent of WSF's total exposure to performance and payment loss, as re-calculated by WSF at such time. Such additional Contract Security may also be declared by WSF to be temporary in nature and may only be required during the performance of certain Contract Work.

37.6. Duration of Contract Security

37.6.1. All Contract Security for performance exposure shall not be exonerated by Final Acceptance of all Contract Work, so long as WSF retains any unsatisfied performance or other warranty claims against the Contractor, and shall remain liable for latent defects in the Contract Work to the maximum extent allowed by law.

37.6.2. All Contract Security for payment exposure shall remain in effect until the latest of the following dates: (i) WSF receipt of releases from other State of Washington agencies; (ii) the last day for filing of any lien, pursuant to RCW Chapter 60.28 or any other applicable lien law; and (iii) settlement of any liens filed under RCW Chapter 60.28 or any other applicable lien law.

37.7. Except for warranty coverage, the Contractor shall not use the same assets to secure more than one form of Contract Security.

38. INSURANCE

38.1. The Contractor shall provide evidence of insurance required under "Types of Insurance" in this Article. Such insurance shall cover injury to persons and/or property suffered by WSF or a third party, as a result of performance of the Contract Work by the Contractor or by any Subcontractor. This coverage shall also provide protection against injuries to all employees of the Contractor and the employees of any Subcontractor engaged in the Contract Work. All insurance required hereunder shall be procured from insurance or indemnity companies with an A.M. Best and Company rating level of A- or better, Class VIII or better, or as otherwise approved by WSF and with companies or through sources approved by the State Insurance Commissioner pursuant to Chapter 48.05, RCW. If an insurance carrier is not an admitted carrier (unauthorized insurer), the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The Contractor shall be responsible for payment of premiums for all insurance required under this Article. The Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Contractor is responsible hereunder, the Contractor shall be solely responsible for all deductibles, self-insured retentions and amounts in excess of the coverage provided. Unless stated otherwise below, any deductibles or self-insured retentions over \$10,000 in the Contractor provided insurance must be declared and approved by WSF. At the option of WSF, the insurer shall either reduce or eliminate such deductibles or self insured retentions with respect to WSF and the other Indemnified Parties; or the Contractor shall procure a bond acceptable to WSF guaranteeing payment of losses and related investigations, claims administration and defense expenses. With respect to all matters for which WSF is responsible hereunder, WSF shall remain fully responsible for all deductibles and amounts in excess of the coverage provided.

1
2 38.2. Evidence of insurance shall be furnished to WSF contemporaneously with execution
3 of the Contract by WSF. Such evidence, executed by the carrier's representative and
4 issued to WSF, shall consist of a certificate of insurance or policy declaration page
5 with required endorsements attached thereto. Acceptance by WSF of deficient
6 evidence does not constitute a waiver of Contract requirements.
7

8 Unless otherwise indicated below, all required insurance for each Vessel shall be kept
9 in force until thirty (30) days after the Completion Date of the final Vessel. The
10 Contractor shall provide written notice to the Secretary of Transportation, care of the
11 WSF Representative, at least forty-five (45) days before cancellation of any coverage
12 or reduction in any limits of liability.
13

14 38.3. Types of Insurance
15

16 38.3.1. Marine Builders' Risk Insurance providing coverage for each Vessel. The
17 coverage shall include Vessel underway activity prior to Delivery.

18 The Marine Builders' Risk Insurance Policy shall identify the name insureds
19 as the Contractor, WSF and all Subcontractors at any tier. The Indemnified
20 Parties shall be additional insureds with respect to liability arising out of the
21 acts or omissions of the Contractor, Subcontractors, their employees, agents
22 and officers and all other Persons for whom the Contractor may be legally or
23 contractually responsible, whether occurring on or off of the site.

24 The Marine Builders' Risk Insurance Policy shall be on an "all risk" basis
25 and shall be for the replacement value thereof for "all risks" of direct
26 physical loss or damage, with a minimum limit of liability equal to the
27 greater of (a) Contract Price divided by the number of Vessels in the
28 Contract plus the value of OFE or (b) the probable maximum loss of the
29 Project and the components thereof, plus "soft cost expense cover"
30 (including but not limited to, additional construction financing interest,
31 construction loan fees, engineering expenses/fees, insurance premiums,
32 accounting fees, project administration expenses, attorneys' fees and fees
33 and other costs associated with such damage or loss and with Regulatory
34 Agencies approvals). The coverage shall be written without risk of liability
35 of WSF for payment and without deduction for depreciation. There shall be
36 no coinsurance penalty provision in any such policy. The Policy deductible
37 shall not exceed **One Hundred Thousand Dollars (\$100,000.00)** per
38 occurrence.

39 In addition to liability for physical loss of, damage to, or damage caused by
40 the Vessel imposed upon the Contractor by law or contract, as provided
41 herein, the Marine Builders' Risk Insurance Policy shall be written to
42 specifically include, in part:
43

- 1 A. All Vessel underway activity as often as necessary for completion
2 and testing of the Contract Work;
3
4 B. Coverage for OFE, if any, from the time of delivery of OFE to the
5 Contractor;
6
7 C. A statement that the policy is primary to all other collectible
8 insurance;
9
10 D. Underwriters' waiver of subrogation against WSF and all
11 Subcontractors at any tier;
12
13 E. Coverage for Earthquake and Volcanic Eruption;
14
15 F. Coverage for renewal of faulty welds; and
16
17 G. Coverage for Hull and Machinery, etc. while the Vessel is at the
18 shipyard or other premises of the Contractor or any Subcontractor.
19

20 38.3.2 Commercial General Liability Insurance written on an occurrence form that
21 shall be no less comprehensive and no more restrictive than the coverage
22 provided by Insurance Services Office (ISO) form CG 00 01 12 04. The
23 Contractor shall maintain such insurance through the expiration of the
24 warranty period. This coverage shall have a minimum limit of \$3 million
25 per occurrence, \$3 million general annual aggregate and \$3 million
26 product/completed operations aggregate. Products and completed
27 operations coverage shall be provided for a period of one year following
28 final acceptance of the work. If commercial general liability insurance or
29 other form with a general aggregate limit and products and completed
30 operations aggregate limit is used, then the aggregate limits shall apply
31 separately to the Project, or the Contractor may obtain separate insurance to
32 provide the required limit which shall not be subject to depletion because of
33 claims arising out of any other project or activity of the Contractor; any such
34 excess insurance shall be at least as broad as the Contractor's primary
35 insurance. The Contractor shall be the named insured and each of the
36 Indemnified Parties shall be additional insureds with respect to liability
37 arising out of the acts or omissions of the Contractor, Subcontractors, their
38 employees, agents and officers and all other Persons for whom the
39 Contractor may be legally or contractually responsible, whether occurring
40 on or off of the Site. The required limits can be satisfied by a combination
41 of a primary policy and an excess policy.
42

43 The Commercial General Liability insurance shall include Ship Repairers
44 Legal Liability while performing Contract Work aboard a Vessel. There
45 shall be no exclusion for watercraft in the insurance policy. Such insurance
46 shall cover all operations by, or on behalf of, the Contractor including all

1 operations by a Subcontractor. Such insurance shall cover: bodily injury
2 and property damage liability, including coverage for premises and
3 operations; products and completed operations; contractual liability; broad
4 form property damage, including property in the Contractor's care, custody
5 and control; and personal injury liability.
6

7 38.3.3 Commercial Automobile Liability Insurance: The Contractor shall provide
8 comprehensive automobile liability insurance covering the ownership,
9 maintenance or use of all owned/leased, non-owned and hired vehicles used
10 in the performance of the Contract Work, both on and off the Project site,
11 including loading and unloading, with limits of not less than \$1 million,
12 combined single limit for bodily injury and property damage liability. The
13 Contractor shall maintain such insurance through Final Acceptance;
14 provided, however, that such coverage shall be maintained for vehicles used
15 in the performance of warranty work until the expiration of the warranty
16 period. Coverage shall be provided on Insurance Services Office form
17 number CA 0001 (Ed. 7/97) or equivalent. The Contractor shall be the
18 named insured and the Indemnified Parties shall be additional insureds with
19 respect to liability arising out of the acts or omissions of the Contractor,
20 Subcontractors, their employees, agents and officers and all other Persons
21 for whom the Contractor may be legally or contractually responsible. The
22 required limits can be satisfied by a combination of a primary policy and an
23 excess policy.
24

25 38.3.4 Worker's Compensation Insurance (and Stop-Gap Liability): The
26 Contractor shall provide industrial insurance and medical aid as required
27 under Title 51 RCW (and Stop-Gap Liability insurance for bodily injury or
28 disease) with minimum limits of \$1 million per accident for bodily injury by
29 accident, \$1 million per employee for bodily injury by disease, and \$1
30 million policy limit for bodily injury by disease. The Contractor shall
31 maintain such insurance through the expiration of the Warranty period. The
32 Contractor shall be the named insured on these policies. A Contractor who
33 is self-insured under Title 51 RCW shall also provide an endorsement
34 extending coverage to all State operations on an "if any" basis.
35

36 38.3.5 United States Longshore and Harbor Workers' (U.S. L&H) Insurance and
37 contingent coverage for Jones Act (Marine Employers Liability) in
38 compliance with Federal Statutes, to be provided by the Contractor at least
39 two (2) weeks prior to commencement of Contract Work aboard a Vessel.
40

41 38.3.6 Tower's Legal Liability Insurance for any tower or other transporter hired
42 by the Contractor to transport of the Vessel to and within Puget Sound.
43 Such insurance limits shall be not less than the Contract Price divided by the
44 number of Vessels in the Contract plus the value of OFE to cover loss,
45 damage and/or expense to WSF arising out of such transport. Such
46 insurance shall be primary over any other WSF insurance. WSF and its

officers and employees are to be named as additional insureds under this coverage.

38.3.7 Prior to Contract execution, the Contractor shall file with the Department of Transportation, Contract Payment Section, P.O. Box 47420, Olympia, WA 98504-7420, ACORD form Certificates of Insurance evidencing the minimum insurance coverage required under this Article.

All insurance policies and Certificates of Insurance shall include a requirement providing for a minimum of forty-five (45) days' prior written notice to WSF of any cancellation or reduction of coverage. The Contractor shall promptly deliver to WSF a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate shall be delivered to WSF not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium therefore. If requested by WSF from time to time, certified duplicate copies of the renewal policy shall also be provided.

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of Contract upon which WSF may, after giving five (5) working days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to WSF on demand, or at the sole discretion of WSF, off set against funds due the Contractor from WSF.

All costs for insurance shall be considered incidental to and included in the Contract Price.

38.4 Subcontractor Insurance Requirements. The Contractor shall cause each Subcontractor to provide insurance that complies with requirements for the Contractor's provided insurance set forth in this Article in circumstances where the Subcontractor is not covered by the Contractor's provided insurance; provided that the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors, which determination shall be made in accordance with reasonable and prudent business practices. The Contractor shall cause each such Subcontractor to include each of the Indemnified Parties as additional insureds under such Subcontractor's general liability and motorized vehicle liability insurance policies. The Contractor shall require each such Subcontractor to require that its insurer agree to waive any subrogation rights the insurers may have against the Indemnified Parties. If requested by WSF, the Contractor shall promptly provide certificates of insurance evidencing coverage for each Subcontractor. WSF shall have the right to contact the Subcontractors directly in order to verify the above coverage.

38.5 Upon written request from WSF, following a claim which may result in the Contractor's indemnification obligation, the Contractor shall provide to WSF copies

1 of the policies required under this Article within five (5) working days after the
2 request.

3
4 38.6. WSF will make no payments to the Contractor at any time when the Contractor has
5 not fully complied with the insurance requirements in this Article. This remedy is not
6 exclusive and WSF may take such other action as is available to it under any other
7 provisions of the Contract, or otherwise in law.

8
9 38.7. The insurance coverage and other requirements in this Article shall not limit the
10 Contractor's responsibilities under this Contract including, but not limited to, duties of
11 liability and indemnity.

12 38.8 All insurance policies required to be provided by the Contractor hereunder shall
13 contain or be endorsed to comply with the following provisions, provided that, for the
14 workers' compensation policy, only the following provisions (d) and (h) shall be
15 applicable:

16 (a) For claims covered by the insurance specified herein, said insurance coverage
17 shall be primary insurance with respect to the insureds, additional insureds,
18 and their respective members, directors, officers, employees, agents and
19 consultants, and shall specify that coverage continues notwithstanding the fact
20 that the Contractor has left the site of the Contract Work. Any insurance or
21 self-insurance beyond that specified in this Contract that is maintained by an
22 insured, additional insured, or their members, directors, officers, employees,
23 agents and consultants shall be excess of such insurance and shall not
24 contribute with it.

25 (b) Any failure on the part of a named insured to comply with reporting
26 provisions or other conditions of the policies, any breach of warranty, any
27 action or inaction of a named insured or others, any foreclosure relating to the
28 Project or any change in ownership of all or any portion of the Project shall
29 not affect coverage provided to the other insureds or additional insureds (and
30 their respective members, directors, officers, employees, agents and
31 consultants).

32 (c) The insurance shall apply separately to each insured and additional insured
33 against whom a claim is made or suit is brought, except with respect to the
34 limits of the insurer's liability.

35 (d) Each policy shall be endorsed to state that coverage shall not be suspended,
36 voided, canceled, modified or reduced in coverage or in limits except after 45
37 days (10 days for non-payment of premium) prior written notice by certified
38 mail, return receipt requested, has been given to WSDOT. Such endorsement
39 shall not include any limitation of liability of the insurer for failure to provide
40 such notice.

41 (e) All endorsements adding additional insureds to required policies shall be on
42 form CG-20-10 (1985 edition) or an equivalent form providing additional
43 insureds with coverage for "completed operations".

- 1 (f) The commercial general liability insurance policy shall be endorsed to state
2 that coverage for Subcontractor employees shall not be excluded.
- 3 (g) The automobile liability insurance policy shall be endorsed to include Motor
4 Carrier Act Endorsement-Hazardous materials clean up (MCS-90).
- 5 (h) Each policy shall provide coverage on an "occurrence" basis and not a "claims
6 made" basis.
- 7 38.9 WSF and the Contractor waive all rights against each other, against each of their
8 agents and employees and against Subcontractors and their respective members,
9 directors, officers, employees, agents and consultants for any claims to the extent
10 covered by insurance obtained pursuant to this Article, except such rights as they may
11 have to the proceeds of such insurance. The Contractor shall require all
12 Subcontractors to provide similar waivers in writing each in favor of all other parties
13 enumerated above. Each policy, including workers' compensation, shall include a
14 waiver of any right of subrogation against the additional insureds (and their respective
15 members, directors, officers, employees, agents and consultants).
- 16 38.10 All costs for insurance shall be considered incidental to and included in the Contract
17 Price and no additional payment will be made, except for any deductibles payable by
18 WSDOT as specified herein and except as specified in this Article.
- 19 38.11 If, through no fault of the Contractor, any of the coverages required in this Article (or
20 any of the required terms of such coverages, including policy limits) become
21 unavailable or are available only with commercially unreasonable premiums, WSF
22 will consider in good faith alternative insurance packages and programs proposed by
23 the Contractor, with the goal of reaching agreement on a package providing coverage
24 equivalent to that specified herein. The Contractor must demonstrate to WSF's
25 reasonable satisfaction that it has used diligent efforts in the global insurance markets
26 to place the required insurance coverages, and shall advise WSF of the specific results
27 of those efforts. The Contractor shall not be entitled to any increase in the Contract
28 Price for increased costs resulting from the unavailability of coverage and the
29 requirement to provide acceptable alternatives. WSF shall be entitled to a reduction in
30 the Contract Price if it agrees to accept alternative policies providing less than
31 equivalent coverage, with the amount to be determined by extrapolation using the
32 insurance quotes included in the Escrowed Bid Documents (or based on other
33 evidence of insurance premiums as of the Bid Date if the EBDs do not provide
34 adequate information).

37 **39. NO WAIVER OF LEGAL RIGHTS**

- 38
- 39 39.1. WSF shall not be precluded or estopped by any measurement, estimate, approval or
40 certificate made either before or after the completion of Contract Work and payment
41 therefore from showing the true amount and character of work performed and
42 materials furnished by the Contractor, or from showing that any such measurement,
43 estimate, approval or certificate is untrue or incorrectly made, or that the work or
44 materials do not conform in fact to the Contract Documents, and said measurement,

1 estimate, approval or certificate shall not constitute prima facie evidence of proper
2 performance of the Contract Work. WSF shall not be precluded or estopped,
3 notwithstanding any such measurement, estimate, approval or certificate or any
4 payment in accordance therewith, from recovering from the Contractor and its
5 Sureties such damages as it may sustain by reason of the Contractor's failure to
6 comply with the terms of the Contract Documents. No action, failure to act, or course
7 of conduct by WSF or any knowledge, actual or constructive, on the part of WSF
8 shall in any way be deemed a waiver of the procedures and requirements of the
9 Contract Documents.

10 11 12 **40. ANTITRUST BREACH**

- 13
14 40.1. The Contractor and WSF recognize that the impact of overcharges to WSF by the
15 Contractor resulting from antitrust law violations by the Contractor's suppliers and
16 Subcontractors adversely affects WSF rather than the Contractor. Therefore, the
17 Contractor agrees to assign to WSF any and all claims for such overcharges.
18
19

20 **41. ASSIGNMENT**

- 21
22 41.1. The Contractor shall not assign all or any part of this Contract or the Contract Work
23 unless WSF, in its sole discretion, approves such assignment in writing.
24
25 41.2. The Contractor may assign moneys due or to become due under the Contract. Such
26 assignment will be recognized by WSF, if given written notice thereof, to the extent
27 permitted by law; but any assignment of moneys shall be subject to all offsets,
28 withholding, and deductions provided for by law and under the Contract.
29
30

31 **42. COMPUTATION OF TIME**

- 32
33 42.1. All periods of time set forth in this Contract shall be computed by calendar days,
34 including Saturdays, Sundays and holidays, unless expressly stated otherwise.
35
36

37 **43. PERSONAL LIABILITY OF PUBLIC OFFICIALS**

- 38
39 43.1. No member of the Commission or officer or employee of the State, WSF, or
40 Government including, but not limited to, the Secretary, WSF's Executive Director
41 and the members of the Department shall be personally liable for any acts or failure to
42 act in connection with the Contract, it being understood that in such matters they are
43 acting solely as agents of the Government and the State.
44
45

1 **44. NO THIRD PARTY BENEFICIARIES**
2

- 3 44.1. Each party's promises, obligations and duties under this Contract are for the benefit of
4 the other party only and not for the benefit of any person or entity not a signatory to
5 this Contract.
6
7

8 **45. TITLE**
9

- 10 45.1. All material and equipment purchased by the Contractor to perform Contract Work
11 shall become the property of WSF upon installation or upon earlier payment by WSF;
12 Provided that the Contractor shall bear the risk of loss for all such material and
13 equipment until Delivery. WSF shall have title thereto free and clear of any lien
14 and/or encumbrances. The Contractor shall promptly pay all indebtedness for labor,
15 materials, tools, equipment and any other items used by the Contractor in the
16 performance of the Contract Work. The Contractor shall not permit any lien, unpaid
17 obligation or charge to disrupt the schedule of Contract Work on any Vessel. If any
18 lien, unpaid obligation or charge results in an *in rem* or any other action against WSF,
19 the Contractor shall take all such steps as are necessary to avoid a delay in Delivery
20 and shall hold WSF harmless from all losses, costs, damages or expenses incidental
21 thereto.
22
23

24 **46. NO ARRESTS OR ATTACHMENTS**
25

- 26 46.1. The parties agree that no lien or other *in rem* proceeding may attach to or otherwise
27 affect title to the Vessel or any other vessel or property owned by WSF in connection
28 with any dispute or claim arising under or in connection with this Contract. To the
29 extent any such rights survive this Contract, the Contractor does waive to the fullest
30 extent permitted by law any *in rem* rights, lien rights or other rights it has or may
31 have under this Contract, under the law, or otherwise, against any Vessel or any other
32 vessel owned or operated by WSF, including but not limited to all maritime lien
33 rights and shall not arrest or attach the Vessel, or any other vessel or property owned
34 or operated by WSF, in connection with any dispute or claim arising under or in
35 connection with this Contract.
36
37 46.2. The Contractor shall be responsible for making certain that equivalent restrictions on
38 the enforcement of lien and *in rem* rights are included in all of its contracts with
39 Subcontractors and suppliers of materials or services.

1 **47. NO WAIVER OF IMMUNITY**

- 2
- 3 47.1. The provisions of this Contract, including but not limited to the "Title" and "No
- 4 Arrests or Attachments" Articles, do not and are not intended to in any manner waive
- 5 or limit WSF's and the State's right of sovereign immunity or any statutory
- 6 prohibition against asserting liens or encumbrances against the property of WSF and
- 7 the State.
- 8
- 9

10 **48. NOTICES**

- 11
- 12 48.1. Unless WSF or the Contractor notifies the other in writing of a change of address or
- 13 of the Representative, in which event any notice shall be mailed, telegraphed,
- 14 facsimiled or delivered to the changed address, any notice under this Contract shall be
- 15 in writing or facsimile addressed to the following Representatives:
- 16
- 17
- 18

19 For WSF:

20

21 David H. Humphreys

22 Project Engineer

23 Washington State Ferries

24 2901 Third Ave., Suite 500

25 Seattle, Washington 98121-3014

26

27 Phone: (206) 515-3666

28 Fax: (206) 515-3676

29

30

For Contractor:

Name

Title

Company Name

Street Address

City, State, Zip

Phone:

Fax:

31 **49. CHOICE OF LAW AND VENUE**

- 32
- 33 49.1. The Contract shall be deemed executed in the State of Washington and the laws of the
- 34 State of Washington shall govern the interpretation and application of its provisions.
- 35 All claims or causes of action under this Contract shall be brought only in the
- 36 Superior Court of Thurston County, Washington. The Contractor waives, to the
- 37 fullest extent permitted by law, any right to challenge jurisdiction, venue or to claim
- 38 that said court is an inconvenient forum.

50. ESCROW BID DOCUMENTATION

50.1. The purpose of this Article is to preserve the Contractor's Bid Price estimate and all related documentation for use by WSF in any protest, dispute difference in position or a disagreement between WSF and the Contractor arising out of this Contract, including but not limited to, pricing of Change Orders, Force Account work, unresolved Contract Reports, Contractor protests or claims.

The Contractor shall submit a legible copy of all EBD documentation to an escrow company designated by WSF. Such Documents shall be placed in escrow with the escrow company and preserved by said company as specified in the following paragraphs of this Article.

50.2. The term "EBD" as used in this Article means any writings, working papers, labor or materials take offs, computer printouts, charts, Subcontractor or supplier quotes or proposals, and any other data compilations that contain or reflect all information, estimated costs or pricing, data, and calculations used by the Contractor to prepare its Phase III Bid. The Contractor shall submit its EBD documentation in hardcopy and whenever possible shall also provide electronic copies. The EBD documentation shall also include, but is not limited to, the Contractor's equipment rates, overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, and quotations from Subcontractors and materialmen to the extent that such rates and quotations were used by the Contractor in formulating and determining the amount of its Bid. EBD documentation shall also include any manuals that are standard to the industry used by the Contractor in preparing its Bid. Such manuals may be included in the EBD documentation by reference. EBD documents do not include documents provided by WSF for use by the Contractor in preparing its Bid.

50.3. The EBD documentation shall be submitted to the designated escrow company within seven (7) days after WSF has executed the Contract. The EBD documents shall be submitted in a sealed container. The container shall be clearly marked "EBD Documents", and shall state the Contractor's name, the date of submittal, the project title, and the Contract number.

50.4. The sealed container shall contain, in addition to the EBD documents, an affidavit signed under oath by an individual authorized by the Contractor to execute bids. The affidavit shall list each EBD document with sufficient specificity so a comparison can be made between the list and the EBD documents to ensure that all of the EBD documents listed in the affidavit has been enclosed in the sealed container. The affidavit shall show that: (i) the affiant has personally examined the EBD documents (ii) all of the documentation used by the Contractor to prepare its Bid or required by this Article have been listed; and (iii) all such documentation has been enclosed in the sealed container.

1 50.5. The escrow company upon receipt of the sealed container shall place the container in
2 a safety deposit box, vault, or other secure place, and immediately notify WSF in
3 writing that the container has been received. Upon receipt of such notice, WSF will
4 promptly notify the Contractor in writing that WSF will open the sealed container to
5 verify that the affidavit has been enclosed and to compare the EBD documents listed
6 in the affidavit with the EBD documents in the container to ensure that all of the EBD
7 documents have been submitted and that the copies are legible. The notification will
8 advise the Contractor of the date and time the container will be opened and the name
9 of the WSF employee who will verify the contents of the container. Unless otherwise
10 approved by the Contractor, the WSF employee verifying the contents of the escrow
11 container will not be involved or connected with the review, evaluation, or resolution
12 of any claim by the Contractor made to WSF in connection with the Contract for
13 which the verification was made. The Contractor may have representatives present at
14 the opening.
15

16 50.6. EBD documents listed in the affidavit but not enclosed in the sealed container
17 through error or oversight shall be submitted in a sealed container within five (5) days
18 after the opening of the original container. Also, any EBD documents that are
19 illegible shall be replaced with legible copies and furnished within five (5) days of
20 opening the original container. The face of the container shall show the same
21 information as the original container except the container shall be marked
22 "Supplemental EBD Documents". The same procedure used in verifying the contents
23 of the original container shall be used in verifying the contents of the supplemental
24 submittal.
25

26 50.7. The EBD documents and affidavit shall remain in escrow for the duration of the
27 Contract, except as provided in this Article, and will be returned to the Contractor by
28 the escrow company, provided the Contractor has signed the Final Contract Voucher
29 Certification (FCVC) and has not reserved any claims on the FCVC against WSF
30 arising out of the Contract. In the event that claims against WSF are reserved on the
31 FCVC, the Bid Documents and the affidavit shall remain in escrow, subject to the
32 provisions of this Article, until resolution of such claims.
33

34 WSF shall have the right to review the EBD documents with respect to: 1) the
35 negotiations of a proposed Change Order prior to execution of any Change Order
36 adjusting the Contract Price; and 2) with respect to any claim or protest submitted by
37 the Contractor, or a dispute, difference, or disagreement arising between the parties
38 regarding any matter under this Contract. Upon five (5) business days written notice,
39 the EBD documents shall be available during business hours for joint review by WSF
40 and the Contractor. If either party persistently fails to attend a noticed time for
41 review, then the other party shall be entitled to proceed with their review. The
42 escrow company shall be entitled to conclusively rely, without notice or investigation,
43 on written certification of any party or parties that another party or parties has
44 persistently failed to attend. WSF shall be entitled to make and retain copies of EBD
45 documents as it deems appropriate, provided that WSF has executed and delivered to

1 the Contractor a confidentiality and non-disclosure agreement in the form set forth in
2 Exhibit 8 to this Contract.

3
4 The escrow company shall release the EBD documents and affidavit as follows:

- 5
6 A. To WSF upon written request as provided above;
7
8 B. Upon order of the Thurston County Superior Court ;
9
10 C. To the Contractor, upon receipt of written approval by WSF, if litigation is not
11 commenced within the time period prescribed by law or upon execution by
12 Contractor of the FCVC without reservation of any claims.
13

14 The Contractor agrees that the sealed container placed in escrow and any
15 supplemental sealed container placed in escrow contain all of the documentation
16 required by this Article and used by the Contractor to determine its Bid Price and that
17 no other documentation relating to such subject matters may be utilized by the
18 Contractor in any litigation over claims brought by the Contractor arising out of this
19 Contract unless otherwise ordered by the Court.
20

21 50.8. The Contractor's failure or refusal to provide EBD documents shall be deemed a
22 material breach of this Contract. WSF may, at its option, refuse to make payment for
23 progress estimates under the "Progress Payments" Article until the Contractor has
24 submitted the EBD documents required by the Contract. Additionally, WSF may, at
25 its option, terminate the Contract for default under the "Termination for Default"
26 Article. These remedies are not exclusive and WSF may take such other action as is
27 available to it under the law.
28

29 50.9. The EBD documents and affidavit in escrow are and will remain the property of the
30 Contractor. WSF has no interest in or right to the EBD documents and affidavit other
31 than to verify the contents and legibility of said documentation and to review the
32 documents under the circumstances noted above. If WSF obtains the EBD documents
33 within the context of litigation, the EBD documents and affidavit may become the
34 property of WSF for use in the litigation as may be appropriate subject to the
35 provisions of any confidentiality agreement or court order limiting or restricting the
36 use or dissemination of the EBD documents and affidavit.
37

38 50.10. The cost of the escrow will be borne by WSF. WSF will provide escrow instructions
39 to the banking institution consistent with this Article.

1 **51. NOTICE OF LABOR DISPUTES**

2
3 51.1. If the Contractor has knowledge that any actual or potential labor dispute is delaying
4 or threatens to delay the timely performance of this Contract, the Contractor shall
5 immediately give verbal notice, followed by written notice, including all relevant
6 information, to the WSF Project Engineer.
7

8 51.2. The Contractor agrees to insert the substance of this Article, including this paragraph,
9 in any subcontract to which a labor dispute may delay the timely performance of this
10 Contract. Each subcontract shall provide that in the event its timely performance is
11 delayed or threatened to be delayed by an actual or potential labor dispute, the
12 Subcontractor shall immediately notify the next higher tier Subcontractor or the
13 Contractor, as the case may be, of all relevant information concerning the dispute.
14

15 51.3. The Contractor shall keep the WSF Project Engineer advised of the results of all labor
16 negotiations that may result in a labor dispute, or which may in turn delay timely
17 performance of the Contract.
18
19

20 **52. PROGRESS REVIEW MEETINGS**

21
22 52.1. The Contractor agrees to sponsor progress review meetings every month, to be held at
23 the Contractor's Facility or at a location approved by the WSF Project Engineer,
24 beginning one (1) month after the Notice to Proceed with the Contract. The purpose
25 of the meetings is to discuss, report, and resolve problems relative to progress,
26 anticipated delays, staffing, schedules, receipt of Owner Furnished Equipment (if
27 any), Contractor furnished material, production problems (including Subcontractor
28 problems), and other related matters.
29

30 52.2. It is agreed and understood that the reports to be made by the Contractor pursuant to
31 this Article are additional to, and not in substitution of, reports and notices required to
32 be made or given by the Contractor pursuant to other Articles of this Contract.
33 However, such reports and notices shall be consistent with data/reports required
34 pursuant to other Articles of this Contract.
35

36 52.3. It is further agreed that both Contractor and WSF will limit those attending and
37 participating in these meetings to those necessary for presentations and those with
38 authority to resolve major Contract problems.
39
40

41 **53. MILESTONES**

42
43 53.1. The Contractor shall comply with the dates established by the Contractor in the
44 Master Construction Schedule required by the Technical Specification. The major
45 milestones to be included in the Master Construction Schedule are listed in the
46 Technical Specification.

1
2 53.2. The initial submission of the Master Construction Schedule shall serve as the
3 Contract baseline for the purposes of this Article. The Contractor shall successfully
4 accomplish the major milestones on, or prior to, the dates listed in the Master
5 Construction Schedule.
6

7 53.3. If any milestone event is not accomplished by the date listed, and the failure to
8 accomplish any such milestone event does not arise from a cause beyond the control
9 and without fault or negligence of the Contractor, such failure may (if it is considered
10 to jeopardize the Delivery Date) be deemed to constitute a failure to perform this
11 Contract in accordance with its terms within the meaning of the "Termination for
12 Default" Article.
13
14

15 **54. GRATUITIES**

16
17 54.1. The Contractor shall not extend any loan, gratuity or gift of money in any form
18 whatsoever to any member of Congress or State Legislature, employee or officer of
19 WSF, nor shall it rent or purchase any equipment or materials from any of these
20 persons. Before final payment will be made, the Contractor shall execute and furnish
21 WSF an affidavit certifying that it has complied with this provision of the Contract.
22 This is a prerequisite to completion of the Final Contract Voucher Certificate.
23
24

25 **55. INTEGRATION, MERGER AND SEVERANCE**

26
27 55.1. All prior understandings and agreements heretofore entered into between WSF and
28 the Contractor, whether written or oral, are superseded by and merged in this Contract
29 which alone fully and completely expresses the agreement between WSF and the
30 Contractor. This Contract may not be changed orally, nor may it be modified or
31 varied in any manner, except in a writing signed by both parties, or as otherwise
32 specified herein. The failure of either party to insist upon strict compliance shall not
33 constitute a waiver or the abrogation of such provision, nor shall it constitute a waiver
34 of compliance or performance in any other instance. No course of dealing between
35 the parties shall operate as a waiver by either party, and no delay on the part of either
36 party in the exercise of any right hereunder shall operate as a waiver of any right of
37 such party. In the event any provision of this Contract, or any amendment thereto, is
38 found to be invalid, illegal or unenforceable, it shall be deemed severed from the
39 Contract, which shall then be construed and enforced as though such illegal, invalid
40 or unenforceable provision had never been a part thereof. All Article headings are for
41 identification purposes only.
42
43

1 **IN WITNESS WHEREOF**, the parties hereto have entered into this Contract, by
2 their duly authorized representatives, as of the day and year first written above.
3
4
5

6 **WASHINGTON STATE FERRIES**
7 **Washington State Department of Transportation**
8
9

10
11 BY: _____
12 Principal Name
13 Title
14
15
16 **Company Name**
17
18

19 BY: _____
20 Principal Name
21 Title
22
23
24

25 APPROVED AS TO FORM FOR WSF:
26
27

28 By: _____
29 Name
30 Assistant Attorney General
31
32

33 Date: _____
34